INTERMEDIATE (IPC) COURSE/ ACCOUNTING TECHNICIAN COURSE

SUPPLEMENTARY STUDY PAPER - 2015

TAXATION

[A discussion on amendments made by the Finance Act, 2015 and significant Circulars/Notifications issued between 1st May, 2014 and 30th April, 2015]

(Relevant for students appearing in May, 2016 and November, 2016 examinations)

BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

This Supplementary Study Paper has been prepared by the Faculty of the Board of Studies of the Institute of Chartered Accountants of India with a view to assist the students in their education. While due care has been taken in preparing this Supplementary Study Paper, if any errors or omissions are noticed, the same may be brought to the attention of the Director of Studies. The Council of the Institute is not responsible in any way for the correctness or otherwise of the amendments published herein.

Website	:	www.icai.org
Department/Committee	:	Board of Studies
E-mail	:	bosnoida@icai.in
Price	:	
ISBN No.	:	
Published by	:	The Publication Department on behalf of The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi- 110 002, India Typeset and designed at Board of Studies.
Printed by	:	

A WORD ABOUT SUPPLEMENTARY

Taxation is amongst the extremely dynamic subjects of the chartered accountancy course. The level of knowledge prescribed at the Intermediate (IPC) Level for the subject is 'working knowledge'. For attaining such a level of knowledge, the students not only have to be thorough with the basic provisions of the income-tax and indirect taxes, but also need to constantly update their knowledge of statutory developments.

The Board of Studies has been instrumental in imparting theoretical education to the students of Chartered Accountancy Course. The distinctive characteristic of the course i.e., distance education, emphasizes the need for bridging the gap between the students and the Institute and for this purpose, Board of Studies provides a variety of educational inputs for the students.

One of the important inputs of the Board is the Supplementary Study Paper on Taxation for the Intermediate (IPC) Course students. The Supplementary Study Paper is an annual publication and contains a discussion on the amendments made by the Annual Finance Acts and Notifications/Circulars in income-tax and indirect taxes. They are very important to the students for updating their knowledge regarding the latest statutory developments in the respective areas mentioned above. A lot of emphasis is being placed on these latest amendments in the Intermediate (IPC) examinations.

The amendments made by the Finance Act, 2015 and significant Notifications/Circulars issued between 1st May, 2014 and 30th April, 2015 have been incorporated in this Supplementary Study Paper - 2015, which is relevant for students appearing in May, 2016 and November, 2016 examinations. It may be noted that since, in Part II: Indirect Taxes, Budget 2014 notifications which were issued in the month of July, 2014 have already been incorporated in the October, 2014 edition of the Study Material, the same are not included in the Supplementary Study Paper – 2015. The Supplementary Study Paper – 2015 has been divided into chapters to facilitate co-relation with the Study Material. The chapter reference given in the Supplementary Study Paper corresponds to the parallel chapter number of the Study Material. The related sections, however, have been grouped together and explained in the same chapter in the Supplementary Study Paper to facilitate interlinking and reading of interconnected provisions. Illustrations and diagrammatic presentations have been given, wherever possible, to aid better understanding of the amendments.

The amendments made by way of notifications/circulars issued after 30th April, 2015 and which are relevant for May, 2016 and November, 2016 examinations will be given in the Revision Test Paper (RTP) for May, 2016 and November, 2016 examinations, respectively. In case you need any further clarification/guidance with regard to this publication, please send your queries relating to income-tax at priya@icai.in and queries relating to indirect taxes at smita@icai.in.

Happy Reading and Best Wishes for the forthcoming examinations!

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INCOME TAX

INCOME TAX

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1

BASIC CONCEPTS

AMENDMENTS BY THE FINANCE ACT, 2015

RATES OF TAX

Section 2 of the Finance Act, 2015 read with Part I of the First Schedule to the Finance Act, 2015, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2015-16. Part II lays down the rate at which tax is to be deducted at source during the financial year 2015-16 from income subject to such deduction under the Income-tax Act, 1961; Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-tax from income chargeable under the head "salaries" and the rates for computing advance tax for the financial year 2015-16 i.e., A.Y.2016-17. Part III of the First Schedule to the Finance Act, 2015 will become Part I of the First Schedule to the Finance Act, 2016 and so on.

Rates for deduction of tax at source for the F.Y.2015-16 from certain income

Part II of the First Schedule to the Act specifies the rates at which income-tax is to be deducted at source under sections 193, 194, 194A, 194B, 194BB, 194D and 195 during the financial year 2015-16. These rates of tax deduction at source are the same as were applicable for the F.Y.2014-15. However, the rate of tax deduction at source has been decreased from 25% to 10% in respect of specified royalty and fees for technical services payable by Government or an Indian concern, in pursuance of an agreement made by it with the Government or the Indian concern, to a non-corporate non-resident or a foreign company.

Surcharge would be levied on income-tax deducted at source in case of non-corporate non-residents and foreign companies. If the recipient is a non-corporate non-resident, surcharge@12% would be levied on such income-tax if the income or aggregate of income paid or likely to be paid and subject to deduction exceeds ₹ 1 crore. If the recipient is a foreign company, surcharge@ –

(i) 2% would be levied on such income-tax, where the income or aggregate of such incomes paid or likely to be paid and subject to deduction exceeds ₹ 1 crore but does not exceed ₹ 10 crore; and

(ii) 5% would be levied on such income-tax, where the income or aggregate of such incomes paid or likely to be paid and subject to deduction exceeds ₹ 10 crore.

Surcharge would not be levied on deductions in all other cases. Also, education cess and secondary and higher education cess would not be added to tax deducted or collected at

source in the case of a domestic company or a resident non-corporate assessee. However, education cess @2% and secondary and higher education cess @1% on income-tax plus surcharge, wherever applicable, would be added to tax deducted at source in cases of non-corporate non-residents and foreign companies.

Rates for deduction of tax at source from "salaries", computation of "advance tax" and charging of income-tax in certain cases during the financial year 2015-16

Part III of the First Schedule to the Act specifies the rate at which income-tax is to be deducted at source from "salaries" and also the rate at which "advance tax" is to be computed and income-tax is to be calculated or charged in certain cases for the financial year 2015-16 i.e., A.Y. 2016-17.

It may be noted that education cess @2% and secondary and higher education cess @1% would continue to apply on tax deducted at source in respect of salary payments.

The general basic exemption limit for individuals/HUFs/AOPs/BOIs and artificial juridical persons remains unchanged i.e. (₹ 2,50,000). The basic exemption limit of ₹ 3,00,000 for senior citizens, being resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year also remains the same. Resident individuals of the age of 80 years or more at any time during the previous year would continue to be eligible for the higher basic exemption limit of ₹ 5,00,000. The tax slabs are shown hereunder -

(i) (a) Individual/ HUF/ AOP / BOI and every artificial juridical person

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 2,50,000	Nil
Where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,50,000
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 25,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,25,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(b) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 3,00,000	Nil

Where the total income exceeds ₹ 3,00,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 3,00,000
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 20,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,20,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(c) For resident individuals of the age of 80 years or more at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 5,00,000	Nil
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,00,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(ii) Co-operative society

There is no change in the rate structure as compared to A.Y.2015-16.

	Level of total income	Rate of income-tax
(1)	Where the total income does not exceed ₹ 10,000	10% of the total income
(2)	Where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹ 10,000
(3)	Where the total income exceeds ₹ 20,000	₹ 3,000 plus 30% of the amount by which the total income exceeds ₹ 20,000

(iii) Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm for A.Y.2016-17 is the same as that for A.Y.2015-16 i.e., 30% on the whole of the total income of the firm. This rate would apply to an LLP also.

(iv) Local authority

The rate of tax for a local authority for A.Y.2016-17 is the same as that for A.Y.2015-16 i.e. 30% on the whole of the total income of the local authority.

(v) Company

The rates of tax for A.Y.2016-17 are the same as that for A.Y.2015-16.

(1)	In the case of a domestic company	30% of the total income
(2)	In the case of a company other than a domestic company	40% of the total income However, specified royalties and fees for rendering technical services (FTS) received from Government or an Indian concern in pursuance of an approved agreement made by the company with the Government or Indian concern between 1.4.1961 and 31.3.1976 (in case of royalties) and between 1.3.1964 and 31.3.1976 (in case of FTS) would be chargeable to tax @50%.

Surcharge

The rates of surcharge applicable for A.Y.2016-17 are as follows -

(i) Individual/HUF/AOP/BOI/Artificial juridical person/Co-operative societies/Local Authorities/Firms/LLPs

Where the total income exceeds ₹1 crore, surcharge is payable at the rate of 12% of income-tax computed in accordance with the provisions of para (i)/(ii)/(iii)/(iv) above or section 111A or section 112.

Marginal relief is available in case of such persons having a total income exceeding ₹1 crore i.e., the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

(ii) Domestic company

(a) <u>In case of a domestic company, whose total income is > ₹ 1 crore but ≤ ₹ 10 crore</u>

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 7% of income-tax computed in accordance with the provisions of para (v)(1) above or section 111A or section 112. Marginal relief is available in case of such companies i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

Example

Compute the tax liability of X Ltd., a domestic company, assuming that the total income of X Ltd. is ₹ 1,01,00,000 and the total income does not include any income in the nature of capital gains.

Answer

The tax payable on total income of ₹ 1,01,00,000 of X Ltd. computed@ 32.1% (including surcharge@7%) is ₹ 32,42,100. However, the tax cannot exceed ₹ 31,00,000 (i.e., the tax of ₹ 30,00,000 payable on total income of ₹ 1 crore plus

₹ 1,00,000, being the amount of total income exceeding ₹ 1 crore). Therefore, the tax payable on ₹ 1,01,00,000 would be ₹ 31,00,000. The marginal relief is ₹ 1,42,100 (i.e., ₹ 32,42,100 - ₹ 31,00,000).

(b) In case of a domestic company, whose total income is > ₹10 crore

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 12% of income-tax computed in accordance with the provisions of para (v)(1) above or section 111A or section 112.

Marginal relief is available in case of such companies i.e., the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 10 crore should not be more than the amount of income exceeding ₹ 10 crore.

Example

Compute the tax liability of X Ltd., a domestic company, assuming that the total income of X Ltd. is ₹ 10,01,00,000 and the total income does not include any income in the nature of capital gains.

Answer

The tax payable on total income of ₹ 10,01,00,000 of X Ltd. computed@ 33.6% (including surcharge@12%) is ₹ 3,36,33,600. However, the tax cannot exceed ₹ 3,22,00,000 [i.e., the tax of ₹ 3,21,00,000 (32.1% of ₹ 10 crore) payable on total income of ₹ 10 crore plus ₹ 1,00,000, being the amount of total income exceeding ₹ 10 crore]. Therefore, the tax payable on ₹ 10,01,00,000 would be ₹ 3,22,00,000. The marginal relief is ₹ 14,33,600 (i.e., ₹ 3,36,33,600 - ₹ 3,22,00,000).

(iii) Foreign company

(a) In case of a foreign company, whose total income is > ₹ 1 crore but ≤ ₹ 10 crore

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 2% of income-tax computed in accordance with the provisions of paragraph (v)(2) above or section 111A or section 112. Marginal relief is available in case of such companies i.e., the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

(b) In case of a foreign company, whose total income is > ₹10 crore

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 5% of income-tax computed in accordance with the provisions of para (v)(2) above or section 111A or section 112.

Marginal relief is available in case of such companies i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 10 crore should not be more than the amount of income exceeding ₹ 10 crore.

Note – Marginal relief would also be available to those companies which are subject to minimum alternate tax under section 115JB, in cases where the book profit (i.e. deemed total income) exceeds ₹ 1 crore and ₹ 10 crore, respectively.

Education cess / Secondary and higher education cess on income-tax

The amount of income-tax as increased by the union surcharge, if applicable, should further be increased by an "Education cess on income-tax", calculated at the rate of 2% of such income-tax plus surcharge, wherever applicable. Further, "Secondary and higher education cess on income-tax" (SHEC) @1% of income-tax and surcharge, wherever applicable, is leviable to fulfill the commitment of the Government to provide and finance secondary and higher education. Education cess, including SHEC, is leviable in the case of all assessees i.e., individuals, HUFs, AOP/BOIs, artificial juridical persons, co-operative societies, firms, LLPs, local authorities and companies. No marginal relief would be available in respect of such cess.

Capital Receipts vs. Revenue Receipts

Government grants, other than grants considered for determination of "actual cost", included in the definition of "Income" [Section 2(24)]

Effective from: A.Y.2016-17

(i) The Supreme Court in, *CIT v Ponni Sugar Mills (2008) 306 ITR 392,* observed that it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. If the object of the subsidy scheme was to enable the assessee to run the business more profitably, then, the receipt was on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand an existing unit, then, the receipt of the subsidy was on capital account. The rationale of the Supreme Court ruling has been applied in many cases and accordingly, grants given with a view to develop backward area or to enable industries to trade over financial crisis or to generate employment in a State have been regarded as being capital in nature. For instance, in *CIT v. Rasoi Ltd. (2011) 335 ITR 438 (Cal.)*, it was held that subsidy received by the assessee from the Government of West Bengal under the scheme of industrial promotion for expansion of its capacities, modernization and improving its marketing capabilities was a capital receipt, not chargeable to tax. In *CIT v. Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)*, it was held that incentive received under the scheme formulated by the Central Government for recoupment of capital employed and repayment of loans taken for setting up/expansion of a sugar factory was a capital receipt.

(ii) The Central Government has, *vide* Notification dated 31.3.2015, in exercise of the powers conferred under section 145(2), notified ten income computation and disclosure standards (ICDSs) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or "Income from other sources". This notification shall come into force with effect from 1st April, 2015, and shall accordingly apply to the A.Y. 2016-17 and subsequent assessment years.

(iii) ICDS VII deals with the treatment of government grants. It recognizes that government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks etc.

(1) This ICDS requires Government grants relatable to depreciable fixed assets to be reduced from actual cost/WDV.

(2) Where the Government grant is not directly relatable to the asset acquired, then, a pro-rata reduction of the amount of grant should be made in the same proportion as such asset bears to all assets with reference to which the Government grant is so received.

(3) Grants relating to non-depreciable fixed assets have to be recognized as income over the same period over which the cost of meeting such obligations is charged to income.

(4) Government grants receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs to be recognized as income of the period in which it is receivable.

(5) All other Government Grants have to be recognized as income over the periods necessary to match them with the related costs which they are intended to compensate.

(iv) Thus, except in case of government grant relating to a depreciable fixed asset, which has to be reduced from written down value or actual cost, all other grants have to be recognized as upfront income or as income over the periods necessary to match them with the related costs which they are intended to compensate.

(v) Thus, the requirement in ICDS VII to treat Government Grants as upfront or deferred income marks a significant deviation from the settled judicial precedents.

(vi) Further, in line with the requirement in ICDS VII, sub-clause (xviii) has been included in the definition of income under section 2(24). Accordingly, assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee is included in the definition of income. The only exclusion is the subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the asset in accordance with *Explanation 10* to section 43(1).

2
RESIDENCE AND SCOPE OF TOTAL INCOME

AMENDMENTS BY THE FINANCE ACT, 2015

(a) CBDT to prescribe the manner of computation of period of stay for an Indian citizen, being a member of the crew of a foreign bound ship leaving India [Section 6(1)]

Effective from: A.Y. 2015-16

(i) Under section 6(1), the conditions to be satisfied by an individual to be a resident in India are provided. The residential status is determined on the basis of the number of days of his stay in India during a previous year.

(ii) However, in case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty regarding the manner and the basis of determining the period of stay in India for an Indian citizen, being a crew member.

(iii) To remove this uncertainty, *Explanation 2* has been inserted to section 6(1) to provide that in the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner and subject to the prescribed conditions.

(b) Residential status of a company to be determined on the basis of "Place of Effective Management" [Section 6(3)]

Effective from: A.Y. 2016-17

(i) Under section 6(3), conditions to be satisfied by a company, to be a resident in India for a previous year are provided.

(ii) A company is said to be resident in India in any previous year, if-

(a) it is an Indian company; or

(b) during that year, the control and management of its affairs is situated wholly in India.

(iii) Since the condition for a company to be resident was that the whole of control and management should be situated in India and that too for whole of the year, a company could easily avoid becoming a resident by simply holding a board meeting outside India. The existing provision gave scope for creation of shell companies which were incorporated outside but controlled from India.

(iv) 'Place of effective management' (POEM) is a globally recognized concept for determination of residence of a company incorporated in a foreign jurisdiction. The concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation is recognised by many of the tax treaties entered into by India. The Organisation of Economic Cooperation and Development (OECD) also recognises the principle of POEM.

The place of effective management has been defined in the OECD commentary on model convention to mean a place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole, are, in substance, made.

Incorporation of the concept of POEM in the Income-tax Act, 1961 to determine the residence of a company is in line with international standards. It also helps in aligning the provisions of the Act with the Double Taxation Avoidance Agreements (DTAAs) entered into by India with other countries.

This requirement would also discourage the creation of shell companies outside India but being controlled and managed from India.

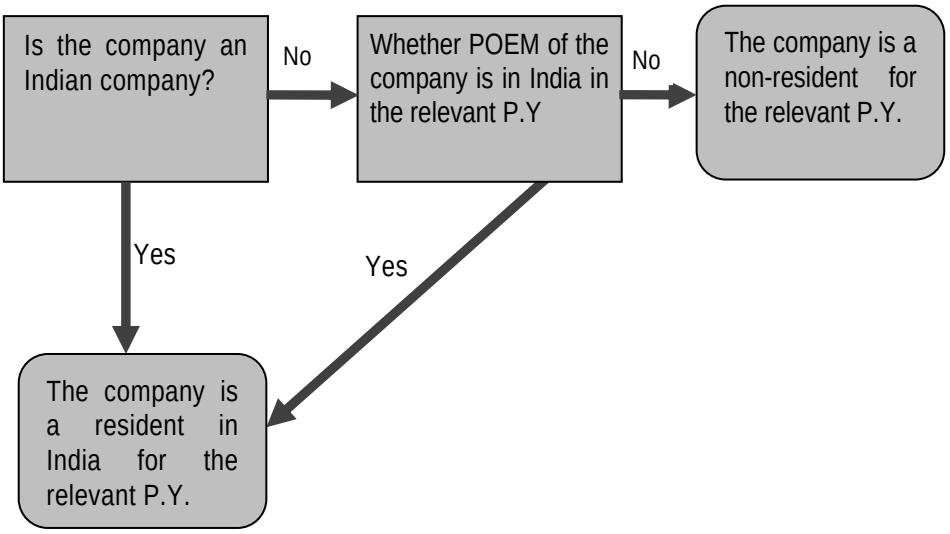
(v) Accordingly, section 6(3) has been substituted to provide that a company would be resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India .

Explanation to section 6(3) defines "place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

Determination of residential status of a company



(vi) A set of principles to be followed in determination of POEM would be issued for the guidance of the taxpayers as well as, tax administration.

(c) Value of Indian assets to determine whether the share or interest of a foreign company or entity is deemed to derive its value substantially from the assets located in India [Section 9(1)(i)]

Effective from: A.Y. 2016-17

(i) Section 9(1) is a deeming provision specifying the incomes which shall be deemed to accrue or arise in India.

(ii) As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India shall be deemed to accrue or arise in India.

(iii) The Finance Act, 2012 had inserted *Explanation* 5 in section 9(1)(i) w.r.e.f. 1.04.1962 to clarify that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

(iv) Taking into account the concerns raised by various stakeholders regarding the scope and impact of the amendments made by Finance Act, 2012, including *inter alia Explanation 5* to section 9(1)(i), an Expert Committee under the Chairmanship of Dr. Parthasarathi Shome was constituted by the Government. On the basis of recommendations of the Expert Committee, the Finance Act, 2015 has inserted *Explanations 6 & 7* to clarify the provisions of *Explanation 5* to section 9(1)(i).

(v) *Explanation 6* provides that the share or interest in a company or entity registered or incorporated outside India, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,-

(a) exceeds the amount of ₹ 10 crore; and

(b) represents at least 50% of the value of all the assets owned by the company or entity, as the case may be;

(vi) Meaning of certain terms:

Term	Meaning
Value of an asset	The fair market value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, determined in prescribed manner
Specified date	The date on which the accounting period of the company or, as the case may be, the entity ends preceding the date of transfer of a share or an interest.

	However, the date of transfer shall be the specified date of valuation, in a case where the book value of the assets of the company or entity on the date of transfer exceeds by at least 15%, the book value of the assets as on the last balance sheet date preceding the date of transfer.
Accounting period	Each period of twelve months ending with 31st March. However, where a company or an entity, referred to in *Explanation* 5, regularly adopts a period of twelve months ending on a day other than 31st March for the purpose of— (a) complying with the provisions of the tax laws of the territory, of which it is a resident, for tax purposes; or (b) reporting to persons holding the share or interest, then, the period of twelve months ending with the other day shall be the accounting period of the company or, as the case may be, the entity:
First Accounting Period	First accounting period of the company or, as the case may be, the entity shall begin from the date of its registration or incorporation and end with the 31st March or such other day, as the case may be, following the date of such registration or incorporation.
Later accounting period	Later accounting period shall be the successive periods of twelve months
Accounting period of an entity which ceases to exist	If the company or the entity ceases to exist before the end of accounting period, as aforesaid, then, the accounting period shall end immediately before the company or, as the case may be, the entity, ceases to exist.

(vii) *Explanation* 7 to section 9(1)(i) provides that no income shall be deemed to accrue or arise to a non-resident from transfer, outside India, of any share of, or interest in, a company or an entity, registered or incorporated outside India, in the following cases;

(1)	Foreign company or entity directly owns the assets situated in India	AND	the transferor (whether individually or along with its associated enterprises), at any time in the twelve months preceding the date of transfer, does not hold • the right of management or control in relation to foreign company or entity; or

			• the voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest, as the case may be, of the foreign company or entity; or
(2)	Foreign company or entity indirectly owns the assets situated in India	AND	the transferor (whether individually or along with its associated enterprises), at any time in the twelve months preceding the date of transfer, does not hold • the right of management or control in relation to foreign company or entity; or • any right in, or in relation to, foreign company or entity which would entitle him to the right of management or control in the company or entity that directly owns the assets situated in India; or • such percentage of voting power or share capital or interest in foreign company or entity which results in holding of (either individually or along with associated enterprises) a voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest, as the case may be, of the company or entity that directly owns the assets situated in India;

In effect, the exemption shall be available to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises, -

(a) neither holds the right of control or management,

(b) nor holds voting power or share capital or interest exceeding 5% of the total voting power or total share capital,

in the foreign company or entity directly holding the Indian assets (direct holding company).

In case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if he along with its associated enterprises,-

(a) neither holds the right of management or control in relation to such company or the entity,

(b) nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding 5% in the direct holding company or entity.

(viii) Further, where all the assets owned, directly or indirectly, by a company or, as the case may be, an entity registered or incorporated outside India, are not located in India, the income of the non-resident transferor, from transfer outside India of a share of, or interest in the foreign company or entity, deemed to accrue or arise in India under this clause, shall be only such part of the income as is reasonably attributable to assets located in India and determined in the prescribed manner.

(ix) "Associated enterprise", in relation to another enterprise, means an enterprise—

(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(d) Taxability of interest payment to a non-resident, being a person engaged in the business of banking, by its Permanent Establishment (PE) in India [Section 9(1)(v)]

Effective from: A.Y. 2016-17

(i) As per section 5(2), the total income of a non-resident would include all income received or deemed to be received in India in the relevant previous year and all income which accrues or arises or is deemed to accrue or arise to him in India in that year.

(ii) The taxability of income in the hands of non-resident in India is determined on the basis of source rule, under which certain categories of income are deemed to accrue or arise in India.

(iii) Section 9(1)(v) lays down the circumstances under which the interest income is deemed to accrue or arise in India.

(iv) Under section 9(1)(v), income by way of interest is deemed to accrue or arise in India, if it is payable by—

(a) the Government; or

(b) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India.

(v) In order to provide clarity and certainty, on the issue of taxability of interest payable by the PE of a non-resident engaged in banking business to the head office, an Explanation has been inserted in section 9(1)(v). Accordingly, in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the PE in India of such non-resident to the head office or any PE or any other part of such non-resident outside India, shall be deemed to accrue or arise in India.

(vi) Such interest shall be chargeable to tax in addition to any income attributable to the PE in India.

(vii) Further, the PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

(viii) Further, the PE in India has to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India. Non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

(ix) Permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

(e) Presence of eligible fund manager in India not to constitute business connection in India of such eligible investment fund on behalf of which he undertakes fund management activity [Section 9A]

Effective from: A.Y. 2016-17

(i) Under section 9(1)(i), income would be deemed to accrue or arise in India in the hands of non-resident, if it arises from a business connection in India. Consequently, income attributable to the activities constituting business connection in India would be taxable in India.

(ii) As per Double Taxation Avoidance Agreements (DTAAs), the source country assumes taxation rights on certain incomes, if the non-resident has a Permanent Establishment (PE) in that country.

(iii) Under section 6, the residential status of a person other than individual is determined based upon the location of its "control and management". As per the existing provisions of law, in case of off-shore funds, the presence of a fund manager in India may create sufficient nexus of the off-shore fund with India and may constitute a business connection in India inspite of the fund manager being an independent person.

Likewise, if the fund manager located in India undertakes fund management activity in respect of investments outside India for an off-shore fund, the profits made by the fund from such investments may be liable to tax in India due to the location of fund

manager in India and attribution of such profits to the activity of the fund manager undertaken on behalf of the off-shore fund.

(iv) Further, presence of the fund manager under certain circumstances may lead to the off shore fund being held to be resident in India on the basis of its control and management being in India.

(v) On account of the fund management activity undertaken in, and from, India constituting a business connection –

(a) the fees received by the fund manager for fund management activity gets taxed in India; and

(b) income of off-shore fund from investments made in countries outside India may also get taxed in India.

Due to the above tax consequences in respect of income from the investments of offshore funds made in other jurisdictions, many fund managers who are of Indian origin, are managing the investment of offshore funds in other countries without locating in India.

(vi) With a view to facilitate location of fund managers of off-shore funds in India, section 9A has been inserted to provide for a specific regime in the Act in line with global best practices with the aim that, subject to fulfillment of certain conditions by the fund and the fund manager,-

(a) the tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of Fund manager located in India; and

(b) that income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments have been undertaken through a fund manager located in India.

(vii) Fund Management Activity through an eligible fund manager not to constitute business connection: In the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfillment of certain conditions.

(viii) Location of Fund Manager in India not to affect residential status of an eligible investment fund: An eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India.

(ix) Conditions to be fulfilled by an Eligible Investment Fund: The eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit. Further, it should fulfill the following conditions:

(a) the fund should not be a person resident in India;

(b) the fund should be a resident of a country or a specified territory with which an agreement referred to in section 90(1) or section 90A(1) has been entered into;

(c) the aggregate participation or investment in the fund, directly or indirectly, by persons being resident in India should not exceed 5% of the corpus of the fund;

(d) the fund and its activities should be subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;

(e) the fund should have a minimum of 25 members who are, directly or indirectly, not connected persons;

(f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;

(g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%;

(h) the investment by the fund in any entity shall not exceed 20% of the corpus of the fund;

(i) no investment shall be made by the fund in its associate entity;

(j) the monthly average of the corpus of the fund shall not be less than ₹100 crore. If the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than ₹100 crore rupees at the end of such previous year;

(k) the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;

(l) the fund should neither be engaged in any activity which constitutes a business connection in India nor should have any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf.

(m) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken on its behalf should not be less than the arm's length price of such activity.

(x) Certain conditions not to apply to investment fund set up by the Government or the Central Bank of a foreign State or a Sovereign Fund

The following conditions would, however, not be applicable in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund or such other fund notified by the Central Government:

(i) the fund should have a minimum of 25 members who are, directly or indirectly, not connected persons;

(ii) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;

(iii) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%.

(xi) Eligible Fund Manager [Section 9A(4)]: The eligible fund manager, in respect of an eligible investment fund, means any person who is engaged in the activity of fund management and fulfills the following conditions:

(a) the person should not be an employee of the eligible investment fund or a connected person of the fund;

(b) the person should be registered as a fund manager or investment advisor in accordance with the specified regulations;

(c) the person should be acting in the ordinary course of his business as a fund manager;

(d) the person along with his connected persons shall not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through such fund manager.

(xii) Furnishing of Statement in prescribed form [Section 9A(5)]: Every eligible investment fund shall, in respect of its activities in a financial year, furnish within 90 days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority. The statement should contain information relating to –

(1) the fulfillment of the above conditions; and

(2) such other relevant information or document which may be prescribed.

(xiii) Non-applicability of special taxation regime under section 9A: This special taxation regime would not have any impact on taxability of any income of the eligible investment fund which would have been chargeable to tax irrespective of whether the activity of the eligible fund manager constituted business connection in India of such fund or not.

Further, the said regime shall not have any effect on the scope of total income or determination of total income in the case of the eligible fund manager.

(xiv) CBDT to prescribe guidelines for the manner of application of the provisions of this section.

(xv) Meaning of certain terms:

Term	Meaning
Associate	An entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member of the fund manager of

	such fund, holds, either individually or collectively, share or interest, being more than 15% of its share capital or interest, as the case may be.
Corpus	The total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date.
Connected person	Any person who is connected directly or indirectly to another person and includes,— (a) any relative of the person, if such person is an individual; (b) any director of the company or any relative of such director, if the person is a company; (c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals; (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family; (e) any individual who has a substantial interest in the business of the person or any relative of such individual; (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member; (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member; (h) any other person who carries on a business, if— (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or (ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;
Entity	An entity in which an eligible investment fund makes an investment.

Specified regulations	• The Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993; or • The Securities and Exchange Board of India (Investment Advisers) Regulations, 2013; or • Such other regulations made under the Securities and Exchange Board of India Act, 1992 which may be notified by the Central Government.

SIGNIFICANT NOTIFICATIONS/CIRCULARS

(1) Clarification regarding applicability of *Explanation 5* to section 9(1)(i) to dividend declared and paid by a foreign company outside India in respect of shares which derive its value substantially from the assets located in India [Circular No. 4/2015, dated 26-03-2015]

Section 9 provides for incomes which are deemed to accrue or arise in India. As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India is deemed to accrue or arise in India.

Explanation 5 to section 9(1)(i) was inserted by the Finance Act, 2012 to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

The Explanatory Memorandum to the Finance Bill, 2012 clearly provides that the amendment of section 9(1)(i) was to reiterate the legislative intent in respect of taxability of gains having economic nexus with India irrespective of the mode of realisation of such gains. Thus, the amendment sought to clarify the source rule of taxation in respect of income arising from indirect transfer of assets situated in India as explicitly mentioned in the Explanatory Memorandum.

Accordingly, *Explanation 5* would be applicable in relation to deeming any income arising outside India from any transaction in respect of any share or interest in a foreign company or entity, which has the effect of transferring, directly or indirectly, the underlying assets located in India, as income accruing or arising in India.

Declaration of dividend by a foreign company outside India does not have the effect of transfer of any underlying assets located in India. This circular, therefore, clarifies that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would NOT be deemed to be income accruing or arising in India by virtue of the provisions of *Explanation 5* to section 9(1)(i).

3

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

AMENDMENTS BY THE FINANCE ACT, 2015

(a) Exemption of specified income of Core Settlement Guarantee Fund (SGF) set up by a recognized Clearing Corporation [Section 10(23EE)]

Effective from: A.Y.2016-17

(i) The Clearing Corporations are required, under the provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 notified by SEBI, to establish a fund, called Core Settlement Guarantee Fund (Core SGF) for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange.

(ii) Under sections 10(23EA), 10(23EC) and 10(23ED), income by way of contributions received from recognized stock exchanges or commodity exchanges and the members thereof or depositories of Investor Protection Fund set up by such recognised stock exchanges in India, or by commodity exchanges in India or by such depository, respectively, as the Central Government may notify in this behalf, are exempt from taxation.

(iii) On parallel lines, clause (23EE) has been inserted in section 10 to exempt any specified income of such Core SGF set up by a recognized clearing corporation in accordance with the regulations, notified by the Central Government in the Official Gazette.

(iv) However, where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is shared, and shall accordingly be chargeable to income-tax.

(v) Meaning of certain terms:

	Terms	Meaning
(i)	Recognised clearing corporation	Meaning assigned as per Regulation 2(1)(o) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 made under the

		SEBI Act, 1992 and Securities Contracts (Regulation) Act, 1956 i.e., "Recognised clearing corporation" means a clearing corporation which is recognised by the SEBI under section 4 read with section 8A of the SEBI Act, 1992;
(ii)	Regulations	Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 made under the SEBI Act, 1992 and Securities Contracts (Regulation) Act, 1956.
(iii)	Specified Income	(a) the income by way of contribution received from specified persons; (b) the income by way of penalties imposed by the recognised clearing corporation and credited to the Core Settlement Guarantee Fund; or (c) the income from investment made by the Fund.
(iv)	Specified person	(a) any recognised clearing corporation which establishes and maintains the Core Settlement Guarantee Fund; (b) any recognised stock exchange being shareholder in such recognised clearing corporation or a contributor to Core Settlement Guarantee Fund; and (c) any clearing member contributing to the Core Settlement Guarantee Fund.

(b) "Yoga" included as a specific category in the definition of "charitable purpose" [Section 2(15)]

Effective from: A.Y.2016-17

(i) Under section 11, a trust or institution is eligible for exemption provided the income derived from property held under trust is applied for charitable purposes in India. This, in fact, is the main condition for grant of exemption.

(ii) Section 2(15) defines 'charitable purpose' to include relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

(iii) Advancement of any other object of general public utility shall, however, not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. However, this restriction shall not apply if the aggregate value of the receipts from the activities referred above is Rs.25 lakh or less in the previous year.

(iv) The above restriction applies only if the object of the charitable institution falls under the residual category, namely, "advancement of any other object of general public

utility". It does not apply institutions having any other charitable purpose like relief of poor, education and medical relief etc.

(v) Institutions, which, as part of genuine charitable activities, undertake activities like publishing books or holding program on yoga or other programs as part of actual carrying out of the objects which are of charitable nature are being put to hardship due to the above restriction, since they fall under the residual clause "advancement of object of general public utility"

(vi) Since the activity of yoga is one of the present focus areas, which has been granted international recognition by the United Nations, 'yoga' has now been included as a specific category in the definition of charitable purpose. Hence, institutions having "yoga" as its main object would not be subject to the restrictions [mentioned in (iii) above] applicable to institutions having the object of "advancement of any other object of general public utility".

(c) Conditions to be satisfied "advancement of any other object of general public utility" to constitute a "charitable purpose" [Section 2(15)]

Effective from: A.Y.2016-17

(i) The definition of "charitable purpose" under section 2(15) has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

(1) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(2) the aggregate receipts from such activity or activities, during the previous year, does not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year .

(ii) In effect, an additional condition has been inserted that such activity has to be undertaken in the course of actual carrying out of such advancement of any other object of general public utility. Further, in the place of an absolute limit of Rs.25 lakhs, a limit based on percentage of total receipts has been specified upto which receipts from an activity in the nature of trade, commerce or business is permissible without affecting the "charitable status" of the trust or institution.

(d) Time limit for filing of Form 10 by a trust or institution for accumulation of income [Section 11(2)]

Related amendment in section: 13

Effective from: A.Y.2016-17

(i) As per section 11, application of income derived from property held under trust for charitable purposes in India is the main condition for grant of exemption to trust or

institution in respect of income derived from property held under such trust. In case such income cannot be applied during the previous year, the same can be accumulated and applied for such purposes, subject to satisfaction of the conditions provided therein.

(ii) Section 11 permits accumulation of 15% of the income indefinitely by the trust or institution. However, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions that such person submits the prescribed form i.e., Form 10 to the Assessing Officer and the money so accumulated or set apart is invested or deposited in the specified forms or modes.

If the accumulated income is not applied for charitable purposes or ceases to be accumulated or set apart for accumulation or ceases to remain invested or deposited in specified modes, then, such income is deemed to be taxable income of the trust or institution.

(iii) For the purpose of clarifying the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, section 11(2) has been amended to provide that -

(1) such person should furnish a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is being accumulated or set apart, which shall, in no case, exceed five years.

In computing the period of five years, the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

(2) the money so accumulated or set apart should be invested or deposited in the modes specified in section 11(5).

(3) the statement in Form 10 should be filed on or before the due date of filing return of income specified under section 139(1).

(iv) In case the statement in Form 10 is not submitted on or before this date, then, the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished on or before the due date of filing return of income specified in section 139(1). This is provided in new sub-section (9) of section 13.

SIGNIFICANT NOTIFICATIONS/CIRCULARS

(1) Commissioner of Income-tax (Exemptions) to act as "prescribed authority" for the purposes of section 10(23C)(iv)/(v)/(vi)/(via)

(i) Notification No. 75/2014, dated 01-12-2014

For the purposes of claiming exemption under section 10(23C)(iv) and (v), a fund or institution established for charitable purposes and/or a trust or institution wholly for

public religious purposes or wholly for public religious and charitable purposes, requires approval of the "prescribed authority".

Accordingly, the CBDT has, through this notification, authorized the Commissioner of Income-tax (Exemptions) to act as "prescribed authority" for the purpose of section 10(23C)(iv)/(v) w.e.f. 15th November, 2014.

(ii) Notification No. 76/2014, dated 01-12-2014

For the purposes of claiming exemption under section 10(23C)(vi) and (via), any university or other educational institution, existing solely for educational purposes and not for purposes of profit, any hospital or other institution, existing solely for philanthropic purposes and not for profit motive, requires approval of the "prescribed authority".

Accordingly, the CBDT has, through this notification, authorized the Commissioner of Income-tax (Exemptions) to act as "prescribed authority" for the purpose of 10(23C)(vi) and (via) section w.e.f. 15th November, 2014.

(2) Percentage of Government grant for determining whether a university or other educational institution, hospital or other institution referred under section 10(23C)(iiiab)/(iiiac) is substantially financed by the Government prescribed [Notification No. 79/2014, dated 12-12-2014]

Income of certain educational institutions, universities and hospitals which exist solely for educational purposes or solely for philanthropic purposes, and not for purposes of profit and which are wholly or substantially financed by the Government are exempt under section 10(23C).

The Finance (No. 2), Act, 2014 inserted an *Explanation* after section 10(23C)(iiiac) to clarify that if the government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds a prescribed percentage of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then, such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for that previous year.

Accordingly, in exercise of the powers conferred by section 295 read with section 10(23C)(iiiab)/(iiiac), the CBDT has notified Rule 2BBB to provide that any university or other educational institution referred under section 10(23C)(iiiab) and hospital or other institution referred under section 10(23C)(iiiac) shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds 50% of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.

(3) Increase in the maximum limit for exemption of transport allowance [Notification No. 39/2015, dated 13-04-2015]

The CBDT has, in exercise of the powers conferred by section 295 read with section 10(14), amended Rule 2BB which *inter alia* provides the limit of exemption of up to ₹ 800

p.m., in respect of transport allowance granted to an employee. Exemption of up to ₹ 1,600 p.m. is available for an employee, who is blind or orthopaedically handicapped, with disability of lower extremities.

Consequent to the amendment made vide this notification, the maximum limit upto which transport allowance can be claimed as an exemption by an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty has been increased from ₹ 800 p.m. to ₹ 1,600 p.m. In case of a blind or orthopaedically handicapped employee with disability of lower extremities, the maximum limit has been revised from ₹ 1,600 p.m. to ₹ 3,200 p.m.

This notification comes into force on 1st April, 2015.

(4) Allowability of deduction under section 10AA on transfer of technical manpower in the case of software industry [Circular No. 14/2014, dated 8-10-2014]

The CBDT had earlier clarified *vide* Circular No.12/2014 dated 18th July, 2014 that mere transfer or re-deployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20% of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

The limit of 20% was considered inadequate and restrictive and it impacted the competitiveness of Indian Software Industry in global market. Consequently, the matter was re-examined by the CBDT, and in supersession of Circular No.12/2014 dated 18th July, 2014, it has now been decided that the transfer or re-deployment of technical manpower from existing unit to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year should not exceed 50% of the total technical manpower actually engaged in development of software or IT enabled products in the new unit. Alternatively, if the assessee-enterprise is able to demonstrate that the net addition of the new technical manpower in all units of the assessee-enterprise is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during such previous year, deduction under section 10AA would not be denied provided the other prescribed conditions are also satisfied. The assessee-enterprise will have the choice of complying with any one of the two alternatives given above to avail the benefit of deduction under section 10AA.

The Circular also clarifies that:

(a) it shall be applicable only in the case of assessees engaged in the development of software or in providing IT enabled services in SEZ units eligible for deduction under section 10AA. .

(b) it shall not apply to the assessments which have already been completed. Further, no appeal shall be filed by the Department in cases where the issue is decided by an appellate authority in consonance with this circular.

4

UNIT 3 : PROFITS AND GAINS OF BUSINESS OR PROFESSION

AMENDMENTS BY THE FINANCE ACT, 2015

(a) Balance 50% of additional depreciation to be allowed in the subsequent year, where the plant and machinery is put to use for less than 180 days during the previous year of acquisition and installation [Sections 32(1)]

Effective from : A.Y. 2016-17

(i) In order to encourage investment in new plant or machinery by the manufacturing and power sector, section 32(1)(iia) provides for deduction of additional depreciation @20% of the cost of new plant or machinery acquired and installed in addition to the normal depreciation allowable under section 32(1)(ii).

(ii) As in the case of normal depreciation, the second proviso to section 32(1) *inter alia* provides that additional depreciation would be restricted to 50% if the new plant or machinery acquired and installed by the assessee, is put to use for the purposes of business or profession for a period of less than 180 days in the previous year of acquisition and installation.

(iii) Non-availability of 100% of additional depreciation for new plant or machinery acquired and installed in the second half of the year may have the effect of deferral of such investment to the next year for availing full 100% of additional depreciation in the next year.

(iv) To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days *vis-a-vis* used for 180 days or more, third proviso to section 32(1)(ii) has been inserted to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

Example:

XYZ Ltd., a manufacturing concern, furnishes the following particulars:

	Particulars	*Rs.*
(1)	*Opening WDV of plant and machinery as on 1.4.2015*	*30,00,000*
(2)	*New plant and machinery purchased and put to use on 08.06.2015*	*20,00,000*
(3)	*New plant and machinery acquired and put to use on 15.12.2015*	*8,00,000*
(4)	*Computer acquired and installed in the office premises on 2.1.2016*	*3,00,000*

Compute the amount of depreciation and additional depreciation as per the Income-tax Act, 1961 for the A.Y. 2016-17

Answer

Computation of depreciation and additional depreciation for A.Y. 2016-17

Particulars	Plant & Machinery (15%)	Computer (60%)
Normal depreciation		
• @ 15% on ₹ 50,00,000 [See Working Notes 1 & 2]	7,50,000	-
• @ 7.5% (50% of 15%, since put to use for less than 180 days) on ₹ 8,00,000	60,000	-
• @ 30% (50% of 60%, since put to use for less than 180 days) on ₹ 3,00,000	-	90,000
Additional Depreciation		
• @ 20% on ₹ 20,00,000 (new plant and machinery put to use for more than 180 days)	4,00,000	-
• @10% (50% of 20%, since put to use for less than 180 days) on ₹ 8,00,000	80,000	-
Total depreciation	12,90,000	90,000

Working Notes:

(1) Computation of written down value of Plant & Machinery as on 31.03.2016

	Plant & Machinery	Computer
Written down value as on 1.4.2015	30,00,000	-
Add: Plant & Machinery purchased on 08.6.2015	20,00,000	-
Add: Plant & Machinery acquired on 15.12.2015	8,00,000	-
Computer acquired and installed in the office premises	-	3,00,000
Written down value as on 31.03.2016	58,00,000	3,00,000

(2) Composition of plant and machinery included in the WDV as on 31.3.2016

Particulars	Plant & Machinery (₹)	Computer (₹)
Plant and machinery put to use for 180 days or more	50,00,000	
[₹ 30,00,000 (Opening WDV) + ₹ 20,00,000 (purchased on 8.6.2015)]		
Plant and machinery put to use for less than 180 days	8,00,000	
Computers put to use for less than 180 days		3,00,000
	58,00,000	3,00,000

Notes:

(1) As per the second proviso to section 32(1)(ii), where an asset acquired during the previous year is put to use for less than 180 days in that previous year, the amount of deduction allowable as normal depreciation and additional depreciation would be restricted to 50% of amount computed in accordance with the prescribed percentage.

Therefore, normal depreciation on plant and machinery acquired and put to use on 15.12.2015 and computer acquired and installed on 02.01.2016, is restricted to 50% of 15% and 60%, respectively. The additional depreciation on the said plant and machinery is restricted to ₹ 80,000, being 10% (i.e., 50% of 20%) of ₹ 8 lakh

(2) As per third proviso to section 32(1)(ii), the balance additional depreciation of ₹ 80,000 being 50% of ₹ 1,60,000 (20% of ₹ 8,00,000) would allowed as deduction in the A.Y.2017-18.

(3) As per section 32(1)(iia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005 by an assessee engaged, *inter alia,* in the business of manufacture or production of any article or thing, @20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, *inter alia*, any machinery or plant installed in office premises, residential accommodation or in any guest house.

Accordingly, additional depreciation is not allowable on computer installed in the office premises.

(b) Manufacturing industries set up in the notified backward areas of specified States to be eligible for a deduction @15% of the actual cost of new plant & machinery acquired and installed during the previous year [Section 32AD]

Effective from: A.Y. 2016-17

(i) In order to encourage the setting up of industrial undertakings in the backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, new

section 32AD has been inserted to provide for a deduction of an amount equal to 15% of the actual cost of new plant and machinery acquired and installed in the assessment year relevant to the previous year in which such plant and machinery is installed, if the following conditions are satisfied by the assessee -

(a) The assessee sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any backward area notified by the Central Government in the State of Andhra Pradesh or Bihar or Telangana or West Bengal; and

(b) the assessee acquires and installs new plant and machinery for the purposes of the said undertaking or enterprise during the period between 1st April, 2015 and 31st March, 2020 in the said backward areas.

(ii) Where the assessee is a company, deduction under section 32AD would be available over and above the existing deduction available under section 32AC, subject to the satisfaction of conditions thereunder.

Accordingly, if an undertaking is set up in the notified backward areas in the States of Andhra Pradesh or Bihar or Telangana or West Bengal by a company, it shall be eligible to claim deduction under section 32AC as well as under section 32AD, if it fulfills the conditions specified in section 32AC and the conditions specified under section 32AD.

(iii) For the purposes of this section, "New plant and machinery" does not include—

(a) any ship or aircraft;

(b) any plant or machinery, which before its installation by the assessee, was used either within or outside India by any other person;

(c) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(d) any office appliances including computers or computer software;

(e) any vehicle;

(f) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

(iv) In order to ensure that the manufacturing units which are set up by availing this incentive actually contribute to economic growth of these backward areas by carrying out the activity of manufacturing for a substantial period of time, a suitable safeguard restricting the transfer of new plant and machinery for a period of 5 years has been provided.

Accordingly, section 32AD(2) provides that if any new plant and machinery acquired and installed by the assessee is sold or otherwise transferred except in connection with the amalgamation or demerger or re-organisation of business, within a period of 5 years from the date of its installation, the amount allowed as deduction in respect of such

new plant and machinery shall be deemed to be the income chargeable under the head "Profits and gains from business or profession" of the previous year in which such new plant and machinery is sold or transferred, in addition to taxability of gains, arising on account of transfer of such new plant and machinery.

(v) However, this restriction shall not apply to the amalgamating or demerged company or the predecessor in a case of amalgamation or demerger or business reorganization referred to in section 47(xiii), 47(xiiib) and 47(xiv), within a period of five years from the date of its installation, but shall continue to apply to the amalgamated company or resulting company or successor, as the case may be.

(c) Additional depreciation @35% to be allowed to assessees setting up manufacturing units in notified backward areas of specified States and acquiring and installing of new plant & machinery [Proviso to section 32(1)(iia)]

Effective from: A.Y. 2016-17

(i) Under section 32(1)(iia), to encourage investment in new plant or machinery, additional depreciation of 20% of the actual cost of plant or machinery acquired and installed is allowed. Such additional depreciation under section 32(1)(iia) is allowed over and above the normal depreciation under section 32(1)(ii).

(ii) In order to encourage acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, a proviso has been inserted to section 32(1)(iia) to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed during the period between 1st April, 2015 and 31st March, 2020 by a manufacturing undertaking or enterprise which is set up in the notified backward areas of these specified States on or after 1st April, 2015.

(iii) Such additional depreciation shall be restricted to 17.5% (i.e., 50% of 35%), if the new plant and machinery acquired is put to use for the purpose of business for less than 180 days in the year of acquisition and installation.

(iv) The balance 50% of additional depreciation (i.e., 50% of 35%) would, however, be allowed in the immediately succeeding financial year.

Example

X Ltd. set up a manufacturing unit in notified backward area in the state of Telangana on 01.06.2015. It invested ₹ 30 crore in new plant and machinery on 1.6.2015. Further, it invested ₹ 25 crore in the plant and machinery on 01.11.2015, out of which ₹ 5 crore was second hand plant and machinery. Compute the depreciation allowable under section 32. Is X Ltd. entitled for any other benefit in respect of such investment? If so, what is the benefit available?

Would your answer change where such manufacturing unit is set up by a firm, say, X & Co., instead of X Ltd.?

Solution

(i) Computation of depreciation under section 32 for X Ltd. for A.Y. 2016-17

Particulars		₹ (in crores)
Plant and machinery acquired on 01.06.2015		30.000
Plant and machinery acquired on 01.11.2015		25.000
WDV as on 31.03.2016		55.000
Less: Depreciation @ 15% on ₹ 30 crore	4.500	
Depreciation @ 7.5% (50% of 15%) on ₹ 25 crore	1.875	
Additional Depreciation@35% on ₹ 30 crore	10.500	
Additional Depreciation@17.5% (50% of 35%) on ₹ 20 crore	3.500	20.375
WDV as on 01.04.2016		34.625

Computation of deduction under section 32AC & 32AD for X Ltd. for A.Y. 2016-17

Particulars	₹ (in crores)
Deduction under section 32AC(1A) @ 15% on ₹ 50 crore (since investment in new plant and machinery acquired and installed in the previous year 2015-16 by X Ltd., a manufacturing company, exceeds ₹ 25 crore)	7.50
Deduction under section 32AD @ 15% on ₹ 50 crore	7.50
Total benefit	15.00

(ii) Yes, the answer would be different, where the manufacturing unit is set up by a firm. The deduction under section 32AC is available only to corporate assesses, and therefore, the deduction of ₹ 7.50 crore under section 32AC would not be available if the manufacturing unit is set up by X & Co., a firm. However, it would be eligible for deduction of ₹ 7.50 crore under section 32AD.

Notes:

(1) As per the second proviso to section 32(1)(ii), where an asset acquired during the previous year is put to use for less than 180 days in that previous year, the amount deduction allowable as normal depreciation and additional depreciation would be restricted to 50% of amount computed in accordance with the prescribed percentage.

Therefore, normal depreciation on plant and machinery acquired and put to use on 1.11.2015 is restricted to 7.5% (being 50% of 15%) and additional depreciation is restricted to 17.5% (being 50% of 35%).

(2) As per third proviso to section 32(1)(ii), the balance additional depreciation of ₹ 3.5 crore, being 50% of ₹ 7 crore (35% of ₹ 20 crore) would be allowed as deduction in the A.Y.2017-18.

(3) As per section 32(1)(iia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005 by an assessee engaged, *inter alia*, in the business of manufacture or production of any article or thing. In this case, since new plant and machinery acquired was installed by a manufacturing unit set up in a notified backward area in the State of Telengana, the rate of additional depreciation is 35% of actual cost of new plant and machinery. Since plant and machinery of ₹ 20 crore was put to use for less than 180 days, additional depreciation@17.5% (50% of 35%) is allowable as deduction. However, additional depreciation shall not be allowed in respect of second hand plant and machinery of ₹ 5 crore.

Likewise, the benefit available under sections 32AC and 32AD would not be allowed in respect of second hand plant and machinery.

Accordingly, additional depreciation and investment allowance under sections 32AC and 32AD have not been provided on ₹ 5 crore, being the actual cost of second hand plant and machinery acquired and installed in the previous year.

(d) Prescribed conditions relating to maintenance of accounts, audit, etc. to be fulfilled by the approved in-house R&D facility [Section 35(2AB)]; Prescribed Authority may also submit Report to Chief Commissioner or Commissioner [Sections 35(2AB) & 35(2AA)]

Effective from: A.Y. 2016-17

(i) Section 35(2AB) provides for weighted deduction of 200% to a company engaged in the business of biotechnology or manufacturing of goods (except items specified in Schedule-XI) for the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research carried out in an in-house research and development facility approved by the prescribed authority.

(ii) For availing this weighted deduction, the company is required to enter into an agreement with the prescribed authority, namely the Secretary, Department of Scientific and Industrial Research (DSIR).

The Secretary, DSIR is required to send the report regarding approval to DGIT (Exemption) in prescribed Form. The DGIT (Exemption) generally does not have jurisdiction over the assessee company.

(iii) Further, the company is required to maintain separate books of account for approved R&D facility and is also required to get the accounts audited. However, the copy of audit report is required to be submitted to the DSIR only.

(iv) The Comptroller and Auditor General of India in its report on performance audit of pharmaceuticals sector recommended for rationalisation of the provision relating to monitoring of this weighted deduction.

(v) Accordingly, to facilitate a meaningful monitoring mechanism, section 35(2AB) has been amended to provide that deduction thereunder shall be allowed if the company enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfills prescribed conditions with regard to maintenance and audit of accounts and also furnishes prescribed reports.

(vi) Section 35(2AB)(4) providing that the prescribed authority shall submit its report in relation to the approval of research and development facility to the Principal Director General or Director General, has been amended to provide that the prescribed authority can now submit its report to Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in the prescribed form.

(vii) Section 35(2AA) provides for a weighted deduction 200% of the sum paid by an assessee to a National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority.

(viii) The prescribed authority before granting approval has to satisfy itself about the feasibility of carrying out the scientific research and shall submit its report to the Principal Director General or Director General in the prescribed form.

The prescribed authority can now submit its report in the prescribed form to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General having jurisdiction over the company claiming the weighted deduction under the said section.

(e) Interest paid in respect of capital borrowed for acquisition of an asset, for the period upto the date on which the asset is first put to use to be capitalized, even if the acquisition of the asset is not for extension of existing business or profession [Section 36(1)(iii)]

Effective from: A.Y.2016-17

(i) Under section 36(1)(iii), interest paid in respect of capital borrowed for the purposes of the business or profession is allowable as deduction.

(ii) However, interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account of not) for the period beginning from the date on which capital was borrowed for acquisition of the asset till the date on which such asset was first put to use shall not be allowed as deduction as per the proviso to section 36(1)(iii).

(iii) The Central Government has, *vide Notification dated 31.3.2015*, in exercise of the powers conferred under section 145(2), notified ten income computation and disclosure standards (ICDSs) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or "Income from other sources". This notification shall come into force with effect from 1st April, 2015, and shall accordingly apply to the A.Y. 2016-17 and subsequent assessment years.

(iv) ICDS IX on Borrowing Costs deals with the treatment of borrowing costs.

(1) It requires borrowing costs which are directly attributable to the acquisition, construction or production of a qualifying asset to be capitalized as part of the cost of that asset.

(2) Qualifying asset has been defined to mean –

- land, building, machinery, plant or furniture, being tangible assets;
- know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
- inventories that require a period of twelve months or more to bring them to a saleable condition.

(3) This ICDS requires capitalization of specific borrowing costs (in respect of funds borrowed specifically for the purpose of acquisition, construction or production of a qualifying asset) and general borrowing costs. It provides the formula for capitalization of borrowing costs when funds are borrowed generally and used for the purpose of acquisition, construction or production of a qualifying asset.

(4) In case of qualifying assets being tangible and intangible assets, the capitalization shall commence from the date on which funds were borrowed and cease when such asset is first put to use.

(v) The requirement in ICDS IX to capitalize borrowing costs incurred for acquisition of tangible and intangible assets, upto the date the asset is first put to use, was not in line with the requirement under the proviso to section 36(1)(iii) to capitalize interest paid in respect of capital borrowed for acquisition of an asset upto the date the asset is first put to use only where such acquisition is *for extension of existing business or profession*.

(vi) Therefore, in order to remove the inconsistency between the requirement under the Income-tax Act, 1961 and the requirement under ICDS IX, *the proviso to section 36(1)(iii) has been amended to remove the condition that the acquisition should have been for extension of existing business or profession* for capitalization of interest borrowed for acquisition of asset upto the date the asset is first put to use.

(f) Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable [Section 36(1)(vii)]

Effective from: A.Y.2016-17

(i) Under section 36(1)(vii), deduction is allowed in respect of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.

(ii) Therefore, write off in the books of account is an essential condition for claim of bad debts under section 36(1)(vii).

(iii) The Central Government has, *vide Notification dated 31.3.2015*, in exercise of the powers conferred under section 145(2), notified ten income computation and disclosure standards (ICDSs) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or "Income from other sources". This notification shall come into force with effect from 1st April, 2015, and shall accordingly apply to the A.Y. 2016-17 and subsequent assessment years.

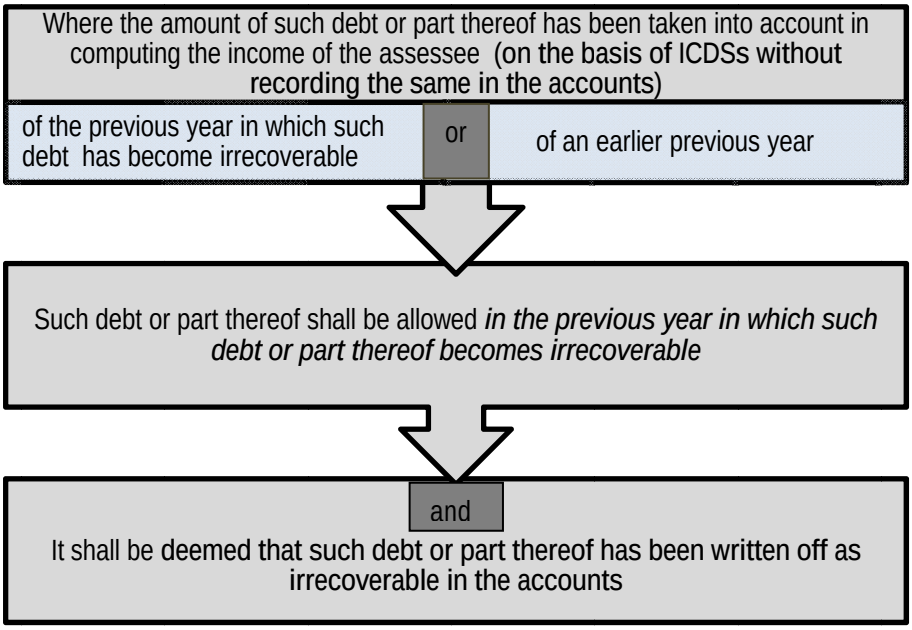
(iv) There are significant deviations between the notified ICDSs and Accounting Standards which are likely to have the effect of advancing the recognition of income or gains or postponing the recognition of expenditure or losses under tax laws and consequently, impacting the computation of tax liability under the Income-tax Act, 1961.

(v) Due to early recognition of income under tax laws, it is possible that in certain cases, income-tax is paid on income which may not be realized in future. In such cases, there would also be no possibility of claiming bad debts since the income would not have been recognized in the books of account as per the Accounting Standards and consequently, cannot be written off as bad debts in books of account.

(vi) For example, ICDS IV requires revenue from sale of goods to be recognized when there is reasonable certainty of its ultimate collection. However, "reasonable certainty for ultimate collection" is not a criterion for recognition of revenue from rendering of services or use by others of person's resources yielding interest, royalties or dividends. By implication, revenue recognition cannot be postponed in case of significant uncertainty regarding collectability of consideration to be derived from rendering of services or use by others of person's resources yielding interest, dividend or royalty.

Consequently, interest on sticky loans or interest on overdue payments as mentioned in invoice may have to be recognized even though there may be uncertainty regarding their collection. In case of non-realisation of such interest in future, it would not also be possible to claim bad debts since such interest, which would not have been recognized in the books of account as per AS 9, cannot be written off. Write off of bad debts in the books of account is an essential condition for claiming deduction under section 36(1)(vii).

(vii) In order to overcome this difficulty arising out of the notified ICDSs, a second proviso has now been inserted in section 36(1)(vii).

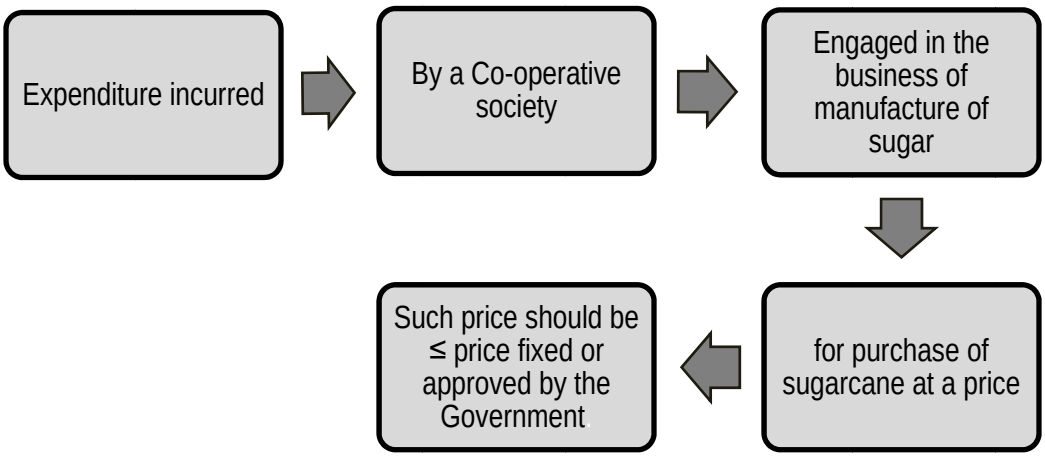


(viii) Consequently, if a debt, which has not been recognized in the books of account as per the requirement of the accounting standards but has been taken into account in the computation of income as per the notified ICDSs, has become irrecoverable, it can still be claimed as bad debts under section 36(1)(vii) since it shall be deemed that the debt has been written off as irrecoverable in the books of account by virtue of the second proviso to section 36(1)(vii).

(g) Amount of expenditure incurred by a co-operative society for purchase of sugarcane at price fixed by the Government allowable as deduction [Section 36(1)(xvii)]

Effective from: A.Y.2016-17

New clause (xvii) has been inserted in section 36 to provide for deduction of:



(1) Clarification regarding disallowance of 'other sum chargeable' under section 40(a)(i) [Circular No. 3/2015, dated 12-02-2015]

If there has been a failure in deduction or in payment of tax deducted in respect of any interest, royalty, fees for technical services or other sum chargeable under the Act either payable in India to non-corporate non-resident or a foreign company or payable outside India, then, disallowance of the related expenditure/ payment is attracted under section 40(a)(i) while computing income chargeable under the head "Profits and gains of business or profession".

The interpretation of the term 'other sum chargeable' in section 195 has been clarified in this circular i.e. whether this term refers to the whole sum being remitted or only the portion representing the sum chargeable to income-tax under the Act.

In its Instruction No. 2/2014, dated 26.02.2014, the CBDT has clarified that the Assessing Officer shall determine the appropriate portion of the sum chargeable to tax as mentioned in section 195(1), to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under section 201, in cases where no application is filed by the deductor for determining the sum so chargeable under section 195(2).

In this circular, the CBDT has, in exercise of its powers under section 119, clarified that for the purpose of making disallowance of 'other sum chargeable' under section 40(a)(i), the appropriate portion of the sum which is chargeable to tax shall form the basis of disallowance. Further, the appropriate portion shall be the same as determined by the Assessing Officer having jurisdiction for the purpose of section 195(1). Also, where the determination of 'other sum chargeable' has been made under sub-section (2), (3) or (7) of section 195 of the Act, such a determination will form the basis for disallowance, if any, under section 40(a)(i).

(2) Rate of depreciation in respect of windmills installed on or after 01.04.2014 [Notification No. 43/2014, dated 16-9-2014]

The CBDT has, vide this notification amended the rate of depreciation on certain renewable energy devices. Accordingly, the following renewable energy devices would be eligible for depreciation @80% from A.Y. 2015-16, if they are installed on or after 1st April 2014 –

(a) Wind mills and any specially designed devices which run on wind mills;

(b) Any special devices including electric generators and pumps running on wind energy

This implies that if the aforesaid renewable energy devices were installed on or before 31st March 2014, they would be eligible for depreciation @ 15% from A.Y. 2015-16.

The applicable rate of depreciation for A.Y. 2014-15 and A.Y. 2015-16, based on date of installation of such renewable energy devices, have been tabulated hereunder for a better understanding of the amendment made vide this notification.

Date of installation	Rate of depreciation	
	A.Y. 2014-15	A.Y. 2015-16
On or before 31.03.2012	80%	15%
Between 1.04.2012 to 31.03.2014	15%	15%
On or after 01.04.2014	N.A	80%

(3) Notification of the income computation and disclosure standards [Notification No. 32/2015, dated 31-03-2015]

Under section 145(1), income chargeable under the heads "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee. Section 145(2) empowers the Central Government to notify in the Official Gazette from time to time, income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income. Accordingly, the Central Government has, in exercise of the powers conferred under section 145(2), notified ten income computation and disclosure standards (ICDSs) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or " Income from other sources". This notification shall come into force with effect from 1st April, 2015, and shall accordingly apply to the A.Y. 2016-17 and subsequent assessment years.

All the notified ICDSs are applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts. In the case of conflict between the provisions of the Income-tax Act, 1961 and the notified ICDSs, the provisions of the Act shall prevail to that extent.

For a better understanding of ICDSs and their impact, the following are given hereunder –

I. Salient features

II. Text of ICDSs

III. ICDSs *vis-à-vis* AS and ICDSs *vis-à-vis* Judicial Rulings: Significant deviations impacting computation of taxable income

I. <u>Salient Features of ICDSs</u>

- ICDS I: Accounting Policies
  - ► This ICDS deals with significant accounting policies.
  - ► While it recognizes the fundamental accounting assumptions of going concern, consistency and accrual, it does not recognize the concepts of "materiality" and "prudence" in selection of accounting policies.
  - ► Treatment and presentation of transactions have to be governed by their

substance and not form.

- ► Marked to market loss or an expected loss is not to be recognized unless recognition of such loss is in accordance with the provisions of any other ICDS.

➢ ICDS II :Valuation of Inventories

- ► "Inventories" has been defined to mean assets held for –
  - o sale in the ordinary course of business;
  - o in the process of production for such sale;
  - o in the form of materials or supplies to be consumed in the production process or in the rendering of services.
- ► This ICDS requires inventory to be valued at cost or net realizable value, whichever is lower.
- ► This ICDS requires disclosure of the accounting policies adopted in measuring inventories including the cost formulae used and the total carrying amount of inventories and its classification appropriate to a person.

➢ ICDS III: Construction Contracts

- ► This ICDS is required to be applied in determination of income for a construction contract of a contractor.
- ► It recognizes percentage of completion method (POCM) for recognizing contract revenue and contract costs associated with a construction contract.
- ► This ICDS also contains certain disclosure requirements, like the amount of contract revenue recognized as revenue in the period, the methods used to determine the stage of completion of contracts in progress etc.

➢ ICDS IV: Revenue Recognition

- ► This ICDS deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from –
  - o the sale of goods;
  - o the rendering of services;
  - o the use by others of the person's resources yielding interest, royalties or dividends.
- ► It does not, however, deal with the aspects of revenue recognition which are dealt with by other ICDSs.
- ► "Revenue" is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of

goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.

- ► This ICDS also contains a provision wherein the revenue from sale of goods could be recognized when there is reasonable certainty of its ultimate collection.
- ► However, "reasonable certainty for ultimate collection" is not a criterion for recognition of revenue from rendering of services or use by others of person's resources yielding interest, royalties or dividends.
- ► This ICDS contains certain disclosure requirements, like the amount of revenue from service transactions recognized as revenue during the previous year, the method used to determine the stage of completion of service transactions in progress, information relating to service transactions in progress at the end of the previous year etc.

➢ ICDS V: Tangible Fixed Assets

- ► This ICDS deals with the treatment of tangible fixed assets.
- ► It contains the definition of tangible fixed assets which also provides the criteria for determining whether an item is to be classified as a tangible fixed asset.
- ► "Tangible fixed asset" is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business.
- ► This ICDS provides the components of actual cost of such assets and valuation of such assets in special cases.
- ► The fair value of a tangible fixed asset acquired in exchange for shares or other securities or another asset shall be its actual cost.
- ► The ICDS also provides that depreciation on such assets and income arising on transfer of such assets shall be computed in accordance with the provisions of the Income-tax Act, 1961.
- ► The ICDS also contains disclosure requirements in respect of such assets, like the description of asset or block of assets, rate of depreciation, actual cost or written down value, as the case may be, etc.

➢ ICDS VI: The Effects of changes in foreign exchange rates

- ► This ICDS deals with treatment of transactions in foreign currencies, translating the financial statements of foreign operations and treatment of foreign currency transactions in the nature of forward exchange contracts.
- ► This ICDS requires exchange differences arising on settlement of monetary items or conversion thereof at last day of the previous year to be

recognized as income or as expense in that previous year.

- ► In respect of non-monetary items, exchange differences arising on conversion thereof as at the last day of the previous year shall not be recognized as income or as expense in that previous year.
- ► The ICDS contains provisions for initial recognition, conversion at the last date of the previous year and recognition of exchange differences. These provisions shall be subject to the provisions of section 43A of the Income-tax Act, 1961 and Rule 115 of the Income-tax Rules, 1962.
- ► The ICDS requires classification of a foreign operation as an integral foreign operation or a non-integral foreign operation.

➢ ICDS VII: Government Grants

- ► This ICDS deals with the treatment of government grants. It recognizes that government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks etc.
- ► This ICDS does not deal with Government assistance other than in the form of Government grants and Government participation in the ownership of the enterprise.
- ► It requires recognition of Government Grants when there is a reasonable assurance that the person shall comply with the conditions attached to them and the grants shall be received. However, it also states that recognition of Government grant shall not be postponed beyond the date of actual receipt.
- ► This ICDS requires Government grants relatable to depreciable fixed assets to be reduced from actual cost/WDV. It further provides that where the Government grant is not directly relatable to the asset acquired, then a pro-rata reduction of the amount of grant should be made in the same proportion as such asset bears to all assets with reference to which the Government grant is so received.
- ► The standard requires grants relating to non-depreciable fixed assets to be recognized as income over the same period over which the cost of meeting such obligations is charged to income.
- ► The standard also requires Government grants receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person will no further related costs to be recognized as income of the period in which it is receivable.
- ► All other Government Grants have to be recognized as income over the periods necessary to match them with the related costs which they are intended to compensate.
- ► The standard contains certain disclosure requirements, like nature and extent of Government grants recognized during the previous year as

income, nature and extent of Government grants not recognized during the previous year as income and reasons thereof etc.

- ICDS VIII: Securities
  - This ICDS deals with securities held as stock-in-trade.
  - It requires securities to be recognized at actual cost on acquisition, which shall comprise of its purchase price and include acquisition charges like brokerage, fees, tax, duty or cess.
  - The actual cost of a security acquired in exchange for other securities or another asset shall be the fair value of the security so acquired.
  - Subsequently, at the end of any previous year, securities held as stock-in-trade have to be valued at actual cost initially recognized or net realizable value at the end of that previous year, whichever is lower.
  - It goes on to provide that such comparison of actual cost initially recognized and net realizable value has to be done category-wise and not for each individual security.
- ICDS IX: Borrowing Costs
  - This ICDS deals with the treatment of borrowing costs. It does not deal with the actual or imputed cost of owners' equity and preference share capital.
  - It requires borrowing costs which are directly attributable to the acquisition, construction or production of a qualifying asset to be capitalized as part of the cost of that asset. Other borrowing costs have to be recognized in accordance with the provisions of the Act.
  - Qualifying asset has been defined to mean –
    - land, building, machinery, plant or furniture, being tangible assets;
    - know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
    - inventories that require a period of twelve months or more to bring them to a saleable condition.
  - This ICDS requires capitalization of specific borrowing costs and general borrowing costs.
  - This ICDS provides the formula for capitalization of borrowing costs when funds are borrowed generally and used for the purpose of acquisition, construction or production of a qualifying asset.
  - It also provides as to when capitalization of borrowing costs would commence and cease.
  - It requires disclosure of the accounting policy adopted for borrowing costs and the amount of borrowing costs capitalized during the year.

- ICDS X: Provisions, Contingent Liabilities and Contingent Assets
  - This ICDS deals with Provisions, Contingent Liabilities and Contingent Assets. However, it does not deal with provisions, contingent liabilities and contingent assets –
    - resulting from financial instruments,
    - resulting from executory contracts,
    - arising in insurance business from contracts with policyholders and
    - covered by another ICDS.

    It also does not deal with recognition of revenue dealt with by ICDS on Revenue Recognition.
  - The ICDS specifies the conditions for recognition of a provision, namely, existence of a present obligation as a result of a past event, reasonable certainty that outflow of resources embodying economic benefits will be required to settle the obligation and making a reliable estimate of the amount of the obligation.
  - It provides that a person shall not recognize a contingent liability or a contingent asset. However, it requires contingent assets to be assessed continually. When it becomes reasonably certain that inflow of economic benefit will arise, the asset and related income have to be recognized in the previous year in which the change occurs.
  - It contains provisions for measurement and review of a provision and asset and related income.
  - It also provides that a provision shall be used only for expenditures for which the provision was originally recognized.
  - The ICDS also contains specific disclosure requirements in respect of each class of provision, asset and related income recognized.

II. Text of ICDSs

ICDS I – Accounting Policies		
Content heading	Para	Content
Scope	1	This ICDS deals with significant accounting policies.
Fundamental Accounting Assumptions	2	"Going concern" refers to the assumption that the person has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the business, profession or vocation and intends to continue his business, profession or vocation for the foreseeable future. "Consistency" refers to the assumption that accounting policies are consistent from one period to another; "Accrual" refers to the assumption that revenues and costs

		are accrued, that is, recognised as they are earned or incurred (and not as money is received or paid) and recorded in the previous year to which they relate.
Accounting Policies	3	The accounting policies refer to the specific accounting principles and the methods of applying those principles adopted by a person.
Considerations in the Selection and Change of Accounting Policies	4	Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation. For this purpose, (i) the treatment and presentation of transactions and events shall be governed by their substance and not merely by the legal form; and *(ii) marked to market loss or an expected loss shall not be recognised unless the recognition of such loss is in accordance with the provisions of any other Income Computation and Disclosure Standard.*
	5	An accounting policy shall not be changed without *reasonable cause.*
Disclosure of Accounting Policies	6	All significant accounting policies adopted by a person shall be disclosed.
	7	Any change in an accounting policy which has a material effect shall be disclosed. The amount by which any item is affected by such change shall also be disclosed to the extent ascertainable. Where such amount is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect for the current previous year but which is reasonably expected to have a material effect in later previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted and also in the previous year in which such change has material effect for the first time.
	8	Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the item.
	9	If the fundamental accounting assumptions of Going Concern, Consistency and Accrual are followed, specific disclosure is not required. If a fundamental accounting assumption is not followed, the fact shall be disclosed.
Transitional Provisions	10	*All contract or transaction existing on 1st April, 2015 or entered into on or after 1st April, 2015 shall be dealt with in*

		accordance with the provisions of this standard after taking into account the income, expense or loss, if any, recognised in respect of the said contract or transaction for the previous year ending on or before 31st March, 2015.

ICDS II – Valuation of Inventories		
Content heading	Para	Content
Scope	1	This ICDS shall be applied for valuation of inventories, except : (a) Work-in-progress arising under 'construction contract' including directly related service contract which is dealt with by the ICDS on construction contracts; (b) Work-in-progress which is dealt with by other ICDS; (c) Shares, debentures and other financial instruments held as stock-in-trade which are dealt with by the ICDS on securities; (d) Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value; (e) Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular, shall be dealt with in accordance with the ICDS on tangible fixed assets.
Definitions	2(1)(a)	"Inventories" are assets: (i) held for sale in the ordinary course of business; (ii) in the process of production for such sale; (iii) in the form of materials or supplies to be consumed in the production process or in the rendering of services.
	2(1)(b)	"Net realisable value" is the estimated selling price in the ordinary course of business *less* the estimated costs of completion and the estimated costs necessary to make the sale.
	2(2)	Words and expressions used and not defined in this ICDS but defined in the Act shall have the meanings assigned to them in that Act.
Measurement	3	Inventories shall be valued at cost, or net realisable value, whichever is lower.

Cost of Inventories	4	Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.
Costs of Purchase	5	The costs of purchase shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase.
Costs of Services	6	The costs of services in the case of a service provider shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.
Costs of Conversion	7	The costs of conversion of inventories shall include costs directly related to the units of production and a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods. Fixed production overheads shall be those indirect costs of production that remain relatively constant regardless of the volume of production. Variable production overheads shall be those indirect costs of production that vary directly or nearly directly, with the volume of production.
	8	The allocation of fixed production overheads for the purpose of their inclusion in the costs of conversion shall be based on the normal capacity of the production facilities. Normal capacity shall be the production expected to be achieved on an average over a number of periods or seasons under normal circumstances, taking into account the loss of capacity resulting from planned maintenance. The actual level of production shall be used when it approximates to normal capacity. The amount of fixed production overheads allocated to each unit of production shall not be increased as a consequence of low production or idle plant. Unallocated overheads shall be recognised as an expense in the period in which they are incurred. In periods of abnormally high production, the amount of fixed production overheads allocated to each unit of production is decreased so that inventories are not measured above the cost. Variable production overheads shall be assigned to each unit of production on the basis of the actual use of the production facilities.
	9	Where a production process results in more than one product being produced simultaneously and the costs of conversion of each product are not separately identifiable, the costs shall be

		allocated between the products on a rational and consistent basis. Where by-products, scrap or waste material are immaterial, they shall be measured at net realisable value and this value shall be deducted from the cost of the main product.
Other Costs	10	Other costs shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition.
	11	Interest and other borrowing costs shall not be included in the costs of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in the ICDS IX on borrowing costs.
Exclusions from the Cost of Inventories	12	In determining the cost of inventories in accordance with paragraphs 4 to paragraphs 11, the following costs shall be excluded and recognised as expenses of the period in which they are incurred, namely:— (a) Abnormal amounts of wasted materials, labour, or other production costs; (b) Storage costs, unless those costs are necessary in the production process prior to a further production stage; (c) Administrative overheads that do not contribute to bringing the inventories to their present location and condition; (d) Selling costs.
Cost Formulae	13	The Cost of inventories of items (i) that are not ordinarily interchangeable; and (ii) goods or services produced and segregated for specific projects shall be assigned by specific identification of their individual costs.
	14	'Specific identification of cost' means specific costs are attributed to identified items of inventory.
	15	Where there are a large numbers of items of inventory which are ordinarily interchangeable, specific identification of costs shall not be made.
First-in First-out and Weighted Average Cost Formula	16	Cost of inventories, other than the inventory dealt with in paragraph 13, shall be assigned by using the First-in First-out (FIFO), or weighted average cost formula. The formula used shall reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition.

	17	The FIFO formula assumes that the items of inventory which were purchased or produced first are consumed or sold first, and consequently the items remaining in inventory at the end of the period are those most recently purchased or produced. Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average shall be calculated on a periodic basis, or as each additional shipment is received, depending upon the circumstances.
Retail Method	18	Where it is impracticable to use the costing methods referred to in paragraph 16, the retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins. The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price.
Net Realisable Value	19	Inventories shall be written down to net realisable value on an item-by-item basis. Where 'items of inventory' relating to the same product line having similar purposes or end uses and are produced and marketed in the same geographical area and cannot be practicably evaluated separately from other items in that product line, such inventories shall be grouped together and written down to net realisable value on an aggregate basis.
	20	Net realisable value shall be based on the most reliable evidence available at the time of valuation. The estimates of net realisable value shall also take into consideration the purpose for which the inventory is held. The estimates shall take into consideration fluctuations of price or cost directly relating to events occurring after the end of previous year to the extent that such events confirm the conditions existing on the last day of the previous year.
	21	Materials and other supplies held for use in the production of inventories shall not be written down below the cost, where the finished products in which they shall be incorporated are expected to be sold at or above the cost. Where there has been a decline in the price of materials and it is estimated that the cost of finished products will exceed the net realisable value, the value of materials shall be written down to net realisable value which shall be the replacement cost of such materials.

Value of Opening Inventory	22	The value of the inventory as on the beginning of the previous year shall be - (i) the cost of inventory available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and (ii) the value of the inventory as on the close of the immediately preceding previous year, in any other case.
Change of Method of Valuation of Inventory	23	The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause.
Valuation of Inventory in case of certain dissolutions	24	In case of dissolution of a partnership firm or association of person or body of individuals, ***notwithstanding whether business is discontinued or not***, the inventory on the date of dissolution shall be valued at the net realisable value.
Transitional Provisions	25	Interest and other borrowing costs, which do not meet the criteria for recognition of interest as a component of the cost as per para 11, but included in the cost of the opening inventory as on 1st April, 2015, shall be taken into account for determining cost of such inventory for valuation as on the close of the previous year beginning on or after 1st April, 2015 if such inventory continue to remain part of inventory as on the close of the previous year beginning on or after 1st April, 2015.
Disclosure	26	The following aspects shall be disclosed, namely:— (a) the accounting policies adopted in measuring inventories including the cost formulae used; and (b) the total carrying amount of inventories and its classification appropriate to a person.

ICDS III – Construction Contracts			
Content heading	Para		Content
Scope	1	This ICDS should be applied in determination of income for a construction contract of a contractor.	
Definitions	2(1)	(a)	"Construction contract" is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent

			in terms of their design, technology and function or their ultimate purpose or use and includes : (i) contract for the rendering of services which are directly related to the construction of the asset, for example, those for the services of project managers and architects; (ii) contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets.
		(b)	"Fixed price contract" is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output, which may be subject to cost escalation clauses.
		(c)	"Cost plus contract" is a construction contract in which the contractor is reimbursed for allowable or otherwise defined costs, plus a mark up on these costs or a fixed fee.
		(d)	"Retentions" are amounts of progress billings which are not paid until the satisfaction of conditions specified in the contract for the payment of such amounts or until defects have been rectified.
		(e)	"Progress billings" are amounts billed for work performed on a contract whether or not they have been paid by the customer.
		(f)	"Advances" are amounts received by the contractor before the related work is performed.
	2(2)	Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning respectively assigned to them in the Act.	
	3	A construction contract may be negotiated for the construction of a single asset. A construction contract may also deal with the construction of a number of assets which are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.	
	4	Construction contracts are formulated in a number of ways which, for the purposes of this ICDS, are classified as fixed price contracts and cost plus contracts. Some construction contracts may contain characteristics of both a fixed price contract and a cost plus contract, for example, in the case of a cost plus contract with an agreed maximum price.	
Combining and Segmenting	5	The requirements of this ICDS shall be applied separately to each construction contract except as provided for in paragraphs 6, 7 and 8 herein. For reflecting the substance of a contract or a	

Construction Contracts		group of contracts, where it is necessary, the ICDS should be applied to the separately identifiable components of a single contract or to a group of contracts together.
	6	Where a contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when: (a) separate proposals have been submitted for each asset; (b) each asset has been subject to separate negotiation and the contractor and customer have been able to accept or reject that part of the contract relating to each asset; and (c) the costs and revenues of each asset can be identified.
	7	A group of contracts, whether with a single customer or with several customers, should be treated as a single construction contract when: (a) the group of contracts is negotiated as a single package; (b) the contracts are so closely interrelated that they are, in effect, part of a single project with an overall profit margin; and (c) the contracts are performed concurrently or in a continuous sequence.
	8	Where a contract provides for the construction of an additional asset at the option of the customer or is amended to include the construction of an additional asset, the construction of the additional asset should be treated as a separate construction contract when: (a) the asset differs significantly in design, technology or function from the asset or assets covered by the original contract; or (b) the price of the asset is negotiated without having regard to the original contract price.
Contract Revenue	9	Contract revenue shall be recognised when there is reasonable certainty of its ultimate collection.
	10	Contract revenue shall comprise of: (a) the initial amount of revenue agreed in the contract, including retentions; and (b) variations in contract work, claims and incentive payments: (i) to the extent that it is probable that they will result in revenue; and (ii) they are capable of being reliably measured.

	11	Where contract revenue already recognised as income is subsequently written off in the books of accounts as uncollectible, the same shall be recognised as an expense and not as an adjustment of the amount of contract revenue.
Contract Costs	12	Contract costs shall comprise of : (a) costs that relate directly to the specific contract; (b) costs that are attributable to contract activity in general and can be allocated to the contract; (c) such other costs as are specifically chargeable to the customer under the terms of the contract; and (d) allocated borrowing costs in accordance with the ICDS on Borrowing Costs. These costs shall be reduced by any incidental income, not being in the nature of interest, dividends or capital gains, that is not included in contract revenue.
	13	Costs that cannot be attributed to any contract activity or cannot be allocated to a contract shall be excluded from the costs of a construction contract.
	14	Contract costs include the costs attributable to a contract for the period from the date of securing the contract to the final completion of the contract. Costs that are incurred in securing the contract are also included as part of the contract costs, provided (a) they can be separately identified; and (b) it is probable that the contract shall be obtained. When costs incurred in securing a contract are recognised as an expense in the period in which they are incurred, they are not included in contract costs when the contract is obtained in a subsequent period.
	15	Contract costs that relate to future activity on the contract are recognised as an asset. Such costs represent an amount due from the customer and are classified as contract work in progress.
Recognition of Contract Revenue and Expenses	16	Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date.
	17	The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in

		reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.
	18	The stage of completion of a contract shall be determined with reference to: (a) the proportion that contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or (b) surveys of work performed; or (c) completion of a physical proportion of the contract work. Progress payments and advances received from customers are not determinative of the stage of completion of a contract.
	19	When the stage of completion is determined by reference to the contract costs incurred up to the reporting date, only those contract costs that reflect work performed are included in costs incurred up to the reporting date. Contract costs which are excluded are: (a) contract costs that relate to future activity on the contract; and (b) payments made to sub-contractors in advance of work performed under the subcontract.
	20	During the early stages of a contract, where the outcome of the contract cannot be estimated reliably contract revenue is recognised only to the extent of costs incurred. The early stage of a contract shall not extend beyond 25 % of the stage of completion.
Changes in Estimates	21	The percentage of completion method is applied on a cumulative basis in each previous year to the current estimates of contract revenue and contract costs. Where there is change in estimates, the changed estimates shall be used in determination of the amount of revenue and expenses in the period in which the change is made and in subsequent periods.
Transitional Provisions	22	Contract revenue and contract costs associated with the construction contract, which commenced on or before 31st March, 2015 but not completed by the said date, shall be recognised as revenue and costs respectively in accordance with the provisions of this standard. The amount of contract revenue, contract costs or expected loss, if any, recognised for the said contract for any previous year commencing on or before 1st April, 2015 shall be taken into account for recognising revenue and costs of the said contract for the previous year commencing on the 1st April, 2015 and subsequent previous years.

Disclosure	23	A person shall disclose: (a) the amount of contract revenue recognised as revenue in the period; and (b) the methods used to determine the stage of completion of contracts in progress.
	24	A person shall disclose the following for contracts in progress at the reporting date, namely:— (a) amount of costs incurred and recognised profits (less recognised losses) upto the reporting date; (b) the amount of advances received; and (c) the amount of retentions.

ICDS IV- Revenue recognition		
Content heading	**Para**	**Content**
Scope	1(1)	This ICDS deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from (i) the sale of goods; (ii) the rendering of services; (iii) the use by others of the person's resources yielding interest, royalties or dividends.
	1(2)	This ICDS does not deal with the aspects of revenue recognition which are dealt with by other Income Computation and Disclosure Standards.
Definitions	2(1)	"Revenue" is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash,receivables or other consideration
	2(2)	Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.
Sale of Goods	3	In a transaction involving the sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In a situation, where

		transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue in such a situation shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.
	4	Revenue shall be recognised when there is reasonable certainty of its ultimate collection
	5	Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.
Rendering of Services	6	Revenue from service transactions shall be recognized by the percentage completion method. Under this method, revenue from service transactions is matched with the service transactions costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed,. Income Computation and Disclosure Standard on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall mutantis mutandis apply to the recognition of revenue and the associated expenses for a service transaction.
The Use of Resources by Others Yielding Interest, Royalties or Dividends	7	Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.
	8	Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.
	9	Dividends are recognised in accordance with the provisions of the Act.
Transitional Provisions	10	The transitional provisions of ICDS on construction contract shall *mutatis mutandis* apply to the recognition of revenue and the associated costs for a service transaction undertaken on or before 31st March, 2015 but not completed by the said date.
	11	Revenue for a transaction, other than a service transaction referred to in Para 10, undertaken on or before 31st March, 2015 but not completed by the said date shall be recognised in accordance with the provisions of this standard for the

		previous year commencing on 1st April, 2015 and subsequent previous year. The amount of revenue, if any, recognised for the said transaction for any previous year commencing on or before 1st April, 2014 shall be taken into account for recognising revenue for the said transaction for the previous year commencing on 1st April, 2015 and subsequent previous years.
Disclosure	12	Following disclosures shall be made in respect of revenue recognition, namely- (a) in a transaction involving sale of good, total amount not recognised as revenue during the previous year due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty (b) the amount of revenue from service transactions recognised as revenue during the previous year; (c) the method used to determine the stage of completion of service transactions in progress; and (d) for service transactions in progress at the end of previous year: (i) amount of costs incurred and recognised profits (less recognised losses) upto end of previous year; (ii) the amount of advances received; and (iii) the amount of retentions.

ICDS-V : Tangible fixed assets		
Content heading	Para	Content
Scope	1	This ICDS deals with the treatment of tangible fixed assets.
Definitions	2 (1)	(a) "Tangible fixed asset" is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business. (b) "Fair value" of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.
	2(2)	Words and expressions used and not defined in this ICDS but defined in the Act shall have the meanings assigned to them in that Act.

Identification of Tangible Fixed Assets	3	The definition in clause (a) of sub-paragraph (1) of paragraph 2 provides criteria for determining whether an item is to be classified as a tangible fixed asset.
	4	Stand-by equipment and servicing equipment are to be capitalised. Machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalised.
Components of Actual Cost	5	The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, excluding those subsequently recoverable, and any directly attributable expenditure on making the asset ready for its intended use. Any trade discounts and rebates shall be deducted in arriving at the actual cost.
	6	The cost of a tangible fixed asset may undergo changes subsequent to its acquisition or construction on account of (i) Price adjustment, changes in duties or similar factors; or (ii) exchange fluctuation as specified in Income Computation and Disclosure Standard on the effects of changes in foreign exchange rates.
	7	Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset. Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, shall be included as a part of the cost of the project or as a part of the cost of the tangible fixed asset
	8	The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, shall be capitalised. The expenditure incurred after the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as revenue expenditure
Self-constructed Tangible Fixed Assets	9	In arriving at the actual cost of self-constructed tangible fixed assets, the same principles shall apply as those described in paragraphs 5 to 8. Cost of construction that relate directly to the specific tangible fixed asset and costs that are attributable to the construction activity in general and can be allocated to the specific tangible fixed asset shall be included in actual cost. Any internal profits shall be eliminated in arriving at such costs.

Non Monetary Consideration	10	When a tangible fixed asset is acquired in exchange for another asset, the fair value of the tangible fixed asset so acquired shall be its actual cost.
	11	When a tangible fixed asset is acquired in exchange for shares or other securities, the fair value of the tangible fixed asset so acquired shall be its actual cost.
Improvements and Repairs	12	An expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance is added to the actual cost.
	13	The cost of an addition or extension to an existing tangible fixed asset which is of a capital nature and which becomes an integral part of the existing tangible fixed asset is to be added to its actual cost. Any addition or extension, which has a separate identity and is capable of being used after the existing tangible fixed asset is disposed of, shall be treated as separate asset.
Valuation of Tangible Fixed Assets in Special Cases	14	Where a person owns tangible fixed assets jointly with others, the proportion in the actual cost, accumulated depreciation and written down value is grouped together with similar fully owned tangible fixed assets. Details of such jointly owned tangible fixed assets shall be indicated separately in the tangible fixed assets register.
	15	Where several assets are purchased for a consolidated price, the consideration shall be apportioned to the various assets on a fair basis.
Transactional Provisions	16	The actual cost of tangible fixed assets, acquisition or construction of which commenced on or before 31st March, 2015 but not completed by the said date, shall be recognised in accordance with the provisions of this standard. The amount of actual cost, if any, recognised for the said assets for any previous year commencing on or before 1st April, 2014 shall be taken into account for recognising actual cost of the said assets for the previous year commencing on 1st April, 2015 and subsequent previous years.
Depreciation	17	Depreciation on a tangible fixed asset shall be computed in accordance with the provisions of the Act.
Transfers	18	Income arising on transfer of a tangible fixed asset shall be computed in accordance with the provisions of the Act.

Disclosures	19	Following disclosure shall be made in respect of tangible fixed assets, namely:- (a) description of asset or block of assets; (b) rate of depreciation; (c) actual cost or written down value, as the case may be: (d) addition or deductions during the year with dates; in the case of any addition of an assets, date put to use; including adjustments on account of- (i) Central Value Added Tax credit claimed and allowed under the CENVAT Credit Rules, 2004; (ii) Change in rate of exchange of currency; (iii) Subsidy or grant or reimbursement, by whatever name called; (e) depreciation allowable ; and (f) written down value at the end of year;

ICDS-VI : Effects of changes in foreign exchange rates		
Content heading	Para	Content
Scope	1	This ICDS deals with: (a) treatment of transactions in foreign currencies; (b) translating the financial statements of foreign operations; (c) treatment of foreign currency transactions in the nature of forward exchange contracts
Definitions	2(1)	(a) "Average rate" is the mean of the exchange rates in force during a period. (b) "Closing rate" is the exchange rate at the last day of the previous year (c) "Exchange difference" is the difference resulting from reporting the same number of units of a foreign currency in the reporting currency of a person at different exchange rates. (d) "Exchange rate" is the ratio for exchange of two currencies. (e) "Foreign currency" is a currency other than the reporting currency of a person. (f) "Foreign operations of a person" is a branch, by whatever name called, of that person, the activities of which are based or conducted in a country other than India.

		(g) "Foreign currency transaction" is a transaction which is denominated in or requires settlement in a foreign currency, including transactions arising when a person:— (i) buys or sells goods or services whose price is denominated in a foreign currency; or (ii) borrows or lends funds when the amounts payable or receivable are denominated in a foreign currency; or (iii) becomes a party to an unperformed forward exchange contract; or (iv) otherwise acquires or disposes of assets, or incurs or settles liabilities, denominated in a foreign currency: (h) "Forward exchange contract" means an agreement to exchange different currencies at a forward rate, and includes a foreign currency option contract or another financial instrument of a similar nature; (i) "Forward rate" is the specified exchange rate for exchange of two currencies at a specified future date; (j) "Indian currency" shall have the meaning as assigned to it in section 2 of the Foreign Exchange Management Act, 1999; (k) "Integral foreign operation" is a foreign operation, the activities of which are an integral part of the operation of the person; (l) "Monetary items" are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. Cash, receivables, and payables are examples of monetary items; (m) "Non-integral foreign operation" is a foreign operation that is not an integral foreign operation; (n) "Non-monetary items" are assets and liabilities other than monetary items. Fixed assets, inventories, and investments in equity shares are examples of non-monetary items; (o) "Reporting currency" means Indian currency except for foreign operations where it shall mean currency of the country where the operations are carried out.
	2(2)	Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning assigned to them in the Act.

Foreign Currency Transactions		
Initial Recognition	3(1)	A foreign currency transaction shall be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction.
	3(2)	An average rate for a week or a month that approximates the actual rate at the date of the transaction may be used for all transaction in each foreign currency occurring during that period. If the exchange rate fluctuates significantly, the actual rate at the date of the transaction shall be used.
Conversion at Last Date of Previous Year	4	At last day of each previous year:- (a) foreign currency monetary items shall be converted into reporting currency by applying the closing rate; (b) where the closing rate does not reflect with reasonable accuracy, the amount in reporting currency that is likely to be realised from or required to disburse, a foreign currency monetary item owing to restriction on remittances or the closing rate being unrealistic and it is not possible to effect an exchange of currencies at that rate, then the relevant monetary item shall be reported in the reporting currency at the amount which is likely to be realised from or required to disburse such item at the last date of the previous year; and (c) non-monetary items in a foreign currency shall be converted into reporting currency by using the exchange rate at the date of the transaction
Recognition of Exchange Differences	5	(i) In respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be recognised as income or as expense in that previous year. (ii) In respect of non-monetary items, exchange differences arising on conversion thereof at the last day of the previous year shall not be recognised as income or as expense in that previous year.
Exception to Paragraphs 3,4, and 5	6	Notwithstanding anything contained in paragraph 3, 4 and 5; initial recognition, conversion and recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962, as the case may be.

Financial Statements of Foreign Operations		
Classification of Foreign Operations	7(1)	The method used to translate the financial statements of a foreign operation depends on the way in which it is financed and operates in relation to a person. For this purpose, foreign operations are classified as either "integral foreign operations" or "non-integral foreign operations".
	7(2)	The following are indications that a foreign operation is a non-integral foreign operation rather than an integral foreign operation:— (a) while the person may control the foreign operation, the activities of the foreign operation are carried out with a significant degree of autonomy from the activities of the person; (b) transactions with the person are not a high proportion of the foreign operation's activities; (c) the activities of the foreign operation are financed mainly from its own operations or local borrowings; (d) costs of labour, material and other components of the foreign operation's products or services are primarily paid or settled in the local currency; (e) the foreign operation's sales are mainly in currencies other than Indian currency; (f) cash flows of the person are insulated from the day-to-day activities of the foreign operation; (g) sales prices for the foreign operation's products or services are not primarily responsive on a short-term basis to changes in exchange rates but are determined more by local competition or local government regulation (h) there is an active local sales market for the foreign operation's products or services, although there also might be significant amounts of exports.
Integral Foreign Operations	8	The financial statements of an integral foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself.
Non-integral Foreign Operations	9(1)	In translating the financial statements of a non-integral foreign operation for a previous year, the person shall apply the following, namely:— (a) the assets and liabilities both monetary and non-monetary, of the non-integral foreign operation shall be translated at the closing rate; (b) income and expense items of the non-integral foreign

		operation shall be translated at exchange rates at the dates of the transactions; and (c) all resulting exchange differences shall be recognised as income or as expenses in that previous year.
	9(2)	Notwithstanding anything stated in sub-paragraph 1, translation and recognition of exchange difference in cases referred to in section 43A of the Act or Rule 115 of Income-tax Rules, 1962 shall be carried out in accordance with the provisions contained in that section or that rule, as the case may be.
Change in the Classification of a Foreign Operation	10(1)	When there is a change in the classification of a foreign operation, the translation procedures applicable to the revised classification should be applied from the date of the change in the classification.
	10(2)	The consistency principle requires that foreign operation once classified as integral or non-integral is continued to be so classified. However, a change in the way in which a foreign operation is financed and operates in relation to the person may lead to a change in the classification of that foreign operation.
Forward Exchange Contracts	11(1)	Any premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of the contract. Exchange differences on such a contract shall be recognised as income or as expense in the previous year in which the exchange rates change. Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.
	11(2)	The provisions of sub-para 1 shall apply provided that the contract - (a) is not intended for trading or speculation purposes; and (b) is entered into to establish the amount of the reporting currency required or available at the settlement date of the transaction.
	11(3)	The provisions of sub-para 1 shall not apply to the contract that is entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction. For this purpose, firm commitment, shall not include assets and liabilities existing at the end of the previous year
	11(4)	The premium or discount that arises on the contract is measured by the difference between the exchange rate at the date of the inception of the contract and the forward rate specified in the contract. Exchange difference

		on the contract is the difference between: (a) the foreign currency amount of the contract translated at the exchange rate at the last day of the previous year, or the settlement date where the transaction is settled during the previous year; and (b) the same foreign currency amount translated at the date of inception of the contract or the last day of the immediately preceding previous year, whichever is later.
	11(5)	Premium, discount or exchange difference on contracts that are intended for trading or speculation purposes, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be recognised at the time of settlement.
Transitional Provisions	12(1)	All foreign currency transactions undertaken on or after 1st April, 2015 shall be recognised in accordance with the provisions of this standard.
	12(2)	Exchange differences arising in respect of monetary items or non-monetary items, on the settlement thereof during the previous year commencing on 1st April, 2015 or on conversion thereof at the last day of the previous year commencing on 1st April, 2015, shall be recognised in accordance with the provisions of this standard after taking into account the amount recognised on the last day of the previous year ending on 31st March,2015 for an item, if any, which is carried forward from said previous year
	12(3)	The financial statements of foreign operations for the previous year commencing on 1st April, 2015 shall be translated using the principles and procedures specified in this standard after taking into account the amount recognised on the last day of the previous year ending on 31st March, 2015 for an item, if any, which is carried forward from said previous year
	12(4)	All forward exchange contracts existing on 1st April, 2015 or entered on or after 1st April, 2015 shall be dealt with in accordance with the provisions of this standard after taking into account the income or expenses, if any, recognised in respect of said contracts for the previous year ending on or before 31st March, 2015.

ICDS-VII : Government grants		
Content heading	Para	Content
Scope	1	This ICDS deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc.
	2	This ICDS does not deal with:— (a) Government assistance other than in the form of Government grants; and (b) Government participation in the ownership of the enterprise
Definitions	3(1)	(a) "Government" refers to the Central Government, State Governments, agencies and similar bodies, whether local, national or international. (b) "Government grants" are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.
	3(2)	Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.
Recognition of Government Grants	4(1)	Government grants should not be recognised until there is reasonable assurance that (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received.
	4(2)	Recognition of Government grant shall not be postponed beyond the date of actual receipt.
Treatment of Government Grants	5	Where the Government grant relates to a depreciable fixed asset or assets of a person, the grant shall be deducted from the actual cost of the asset or assets concerned or from the written down value of block of assets to which concerned asset or assets belonged to.
	6	Where the Government grant relates to a non-depreciable asset or assets of a person requiring fulfillment of certain obligations, the grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income

	7	Where the Government grant is of such a nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total Government grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the Government grant is so received, shall be deducted from the actual cost of the asset or shall be reduced from the written down value of block of assets to which the asset or assets belonged to.
	8	The Government grant that is receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs, shall be recognised as income of the period in which it is receivable.
	9	The Government grants other than covered by paragraph 5, 6, 7, and 8 shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate.
	10	The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for on the basis of their acquisition cost
Refund of Government Grants	11	The amount refundable in respect of a Government grant referred to in paragraphs 6, 8 and 9 shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount shall be charged to profit and loss statement.
	12	The amount refundable in respect of a Government grant related to a depreciable fixed asset or assets shall be recorded by increasing the actual cost or written down value of block of assets by the amount refundable. Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be provided prospectively at the prescribed rate
Transitional Provisions	13	All the Government grants which meet the recognition criteria of para 4 on or after 1st April, 2015 shall be recognised for the previous year commencing on or after 1st April, 2015 in accordance with the provisions of this standard after taking into account the amount, if any, of the said Government grant recognised for any previous year ending on or before 31st March, 2015.

Disclosures	14	Following disclosure shall be made in respect of Government grants, namely :- (a) nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year; (b) nature and extent of Government grants recognised during the previous year as income; (c) nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and (d) nature and extent of Government grants not recognised during the previous year as income and reasons thereof.

ICDS VIII – Securities

Content heading	Para	Content
Scope	1	This ICDS deals with securities held as stock-in-trade.
	2	This ICDS does not deal with: (a) the bases for recognition of interest and dividends on securities which are covered by the Income Computation and Disclosure Standard on revenue recognition; (b) securities held by a person engaged in the business of insurance; (c) securities held by mutual funds, venture capital funds, banks and public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 or the Companies Act, 2013.
Definitions	3(1)	(a) "Fair value" is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction. (b) "Securities" shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956), other than Derivatives referred to in sub-clause (1a) of that clause.
	3(2)	Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning respectively assigned to them in the Act.

Recognition and Initial Measure-ment of Securities	4	A security on acquisition shall be recognised at actual cost.
	5	The actual cost of a security shall comprise of its purchase price and include acquisition charges such as brokerage, fees, tax, duty or cess.
	6	Where a security is acquired in exchange for other securities, the fair value of the security so acquired shall be its actual cost.
	7	Where a security is acquired in exchange for another asset, the fair value of the security so acquired shall be its actual cost.
	8	Where unpaid interest has accrued before the acquisition of an interest bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre acquisition and post acquisition periods; the pre acquisition portion of the interest is deducted from the actual cost.
Subsequent Measure-ment of Securities	9	At the end of any previous year, securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value at the end of that previous year, whichever is lower.
	10	For the purpose of para 9, the comparison of actual cost initially recognised and net realisable value shall be done categorywise and not for each individual security. For this purpose, securities shall be classified into the following categories, namely:- (a) shares; (b) debt securities; (c) convertible securities; and (d) any other securities not covered above.
	11	The value of securities held as stock-in-trade of a business as on the beginning of the previous year shall be: (a) the cost of securities available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and (b) the value of the securities of the business as on the close of the immediately preceding previous year, in any other case.
	12	Notwithstanding anything contained in para 9, 10 and 11, at the end of any previous year, securities not listed on a recognised stock exchange; or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised.

	13	For the purposes of para 9, 10 and 11 where the actual cost initially recognised cannot be ascertained by reference to specific identification, the cost of such security shall be determined on the basis of first-in-first-out method.

ICDS IX – Borrowing Costs		
Content heading	**Para**	**Content**
Scope	1(1)	This ICDS deals with treatment of borrowing costs.
	1(2)	This ICDS does not deal with the actual or imputed cost of owners' equity and preference share capital.
Definitions	2(1)	(a) "Borrowing costs" are interest and other costs incurred by a person in connection with the borrowing of funds and include: (i) commitment charges on borrowings; (ii) amortised amount of discounts or premiums relating to borrowings; (iii) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings; (iv) finance charges in respect of assets acquired under finance leases or under other similar arrangements. (b) "Qualifying asset" means: (i) land, building, machinery, plant or furniture, being tangible assets; (ii) know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets; (iii) inventories that require a period of twelve months or more to bring them to a saleable condition.
	2(2)	Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning assigned to them in the Act.
Recognition	3	Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation shall be determined in accordance with this ICDS. Other borrowing costs shall be recognised in accordance with the provisions of the Act.

	4	For the purposes of this ICDS, "capitalisation" in the context of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2 means addition of borrowing cost to the cost of inventory.		
Borrowing Costs eligible for Capital-isation	5	To the extent the funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.		
	6	To the extent the funds are borrowed generally and utilised for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula, namely :— A x B/C Where		
		A =	borrowing costs incurred during the previous year except on borrowings directly relatable to specific purposes;	
		B =	(i)	The average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year;
			(ii)	In case the qualifying asset does not appear in the balance sheet of a person on the first day or both on the first day and the last day of the previous year, half of the cost of the qualifying asset;
			(iii)	In case the qualifying asset does not appear in the balance sheet of a person on the last day of previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be, other than those qualifying assets which are directly funded out of specific borrowings; or
		C =	the average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than those assets which are directly funded out of specific borrowings;	

Commencement of Capitalisation	7	The capitalisation of borrowing costs shall commence: (a) in a case referred to in paragraph 5, from the date on which funds were borrowed; (b) in a case referred to in paragraph 6, from the date on which funds were utilised.
Cessation of Capitalisation	8	Capitalisation of borrowing costs shall cease: (a) in case of a qualifying asset referred to in item (i) and (ii) of clause (b) of sub-paragraph (1) of paragraph 2, when such asset is first put to use; (b) in case of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such inventory for its intended sale are complete.
	9	When the construction of a qualifying asset is completed in parts and a completed part is capable of being used while construction continues for the other parts, capitalisation of borrowing costs in relation to a part shall cease:— (a) in case of part of a qualifying asset referred to in item (i) and (ii) of clause (b) of sub-paragraph (1) of paragraph 2, when such part of a qualifying asset is first put to use; (b) in case of part of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such part of inventory for its intended sale are complete.
Transitional Provisions	10	All the borrowing costs incurred on or after 1st April, 2015 shall be capitalised for the previous year commencing on or after 1st April, 2015 in accordance with the provisions of this standard after taking into account the amount of borrowing costs capitalised, if any, for the same borrowing for any previous year ending on or before 31st March, 2015.
Disclosure	11	The following disclosure shall be made in respect of borrowing costs, namely:— (a) the accounting policy adopted for borrowing costs; and (b) the amount of borrowing costs capitalised during the previous year.

ICDS X - Provisions, contingent liabilities and contingent assets		
Content heading	Para	Content
Scope	1	This ICDS deals with provisions, contingent liabilities and contingent assets, except those: (a) resulting from financial instruments; (b) resulting from executory contracts (c) arising in insurance business from contracts with policyholders; and (d) covered by another ICDS
	2	This ICDS does not deal with the recognition of revenue which is dealt with by ICDS Revenue Recognition.
	3	The term 'provision' is also used in the context of items such as depreciation, impairment of assets and doubtful debts which are adjustments to the carrying amounts of assets and are not addressed in this ICDS.
Definitions	4(1)	(a) "Provision" is a liability which can be measured only by using a substantial degree of estimation. (b) "Liability" is a present obligation of the person arising from past events, the settlement of which is expected to result in an outflow from the person of resources embodying economic benefits. (c) "Obligating event" is an event that creates an obligation that results in a person having no realistic alternative to settling that obligation. (d) "Contingent liability is"- (i) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the person; or (ii) a present obligation that arises from past events but is not recognised because (A it is not reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; or

		(B) a reliable estimate of the amount of the obligation cannot be made. (e) "Contingent asset" is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the person. (f) "Executory contracts" are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent. (g) "Present obligation" is an obligation if, based on the evidence available, its existence at the end of the previous year is considered reasonably certain.
	4(2)	Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning respectively assigned to them in the Act.
Recognition		
Provisions	5	A provision shall be recognised when (a) a person has a present obligation as a result of a past event; (b) it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision shall be recognized
	6	No provision shall be recognised for costs that need to be incurred to operate in the future.
	7	It is only those obligations arising from past events existing independently of a person's future actions, that is the future conduct of its business, that are recognised as provisions
	8	Where details of a proposed new law have yet to be finalised, an obligation arises only when the legislation is enacted.
Contingent Liabilities	9	A person shall not recognise a contingent liability
Contingent Assets	10	A person shall not recognise a contingent asset.
	11	Contingent assets are assessed continually and when it becomes reasonably certain that inflow of economic benefit will arise, the asset and related income are recognised in the previous year in which the change occurs.

Measurement		
Best Estimate	12	The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the previous year. The amount of a provision shall not be discounted to its present value.
	13	The amount recognised as asset and related income shall be the best estimate of the value of economic benefit arising at the end of the previous year. The amount and related income shall not be discounted to its present value.
Reimbursements	14	Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when it is reasonably certain that reimbursement will be received if the person settles the obligation. The amount recognised for the reimbursement shall not exceed the amount of the provision.
	15	Where a person is not liable for payment of costs in case the third party fails to pay, no provision shall be made for those costs.
	16	An obligation, for which a person is jointly and severally liable, is a contingent liability to the extent that it is expected that the obligation will be settled by the other parties.
Review	17	Provisions shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed.
	18	An asset and related income recognised as provided in para 11 shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an inflow of economic benefits will arise, the asset and related income shall be reversed.
Use of Provisions	19	A provision shall be used only for expenditures for which the provision was originally recognised.
Transitional Provisions	20	All the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st April, 2015 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st March, 2015.

Disclosure	21(1))	Following disclosure shall be made in respect of each class of provision, namely:- (a) a brief description of the nature of the obligation; (b) the carrying amount at the beginning and end of the previous year; (c) additional provisions made during the previous year, including increases to existing provisions; (d) amounts used, that is incurred and charged against the provisions, during the previous year; (e) unused amounts reversed during the previous year; and (f) the amount of any expected reimbursement, stating the amount of any asset that has been recognized for that expected reimbursement.
	21(2)	Following disclosure shall be made in respect of each class of asset and related income recognized as provided in para 11, namely:- (a) a brief description of the nature of the asset and related income; (b) the carrying amount of asset at the beginning and end of the previous year; (c) addition amount of asset and related income recognized during the year; including increased to assets and related income already recognized: and (d) amount of asset and related income reversed during the previous year.

III. ICDSs *vis-à-vis* AS and ICDSs *vis-à-vis* Judicial Rulings: Significant deviations impacting computation of taxable income

There are significant deviations between the notified ICDSs and Accounting Standards which are likely to have the effect of advancing the recognition of income or gains or postponing the recognition of expenditure or losses under tax laws and consequently, impacting the computation of tax liability under the Income-tax Act, 1961. These deviations would also increase the timing differences between taxable income and accounting income. Further, the ICDSs, at many places, differ significantly from decisions pronounced by the Supreme Court and High Courts. Some of the deviations are highlighted hereunder. It may be noted that though judicial rulings are not relevant at IIPCC level, the deviations in ICDS *vis-à-vis* judicial rulings have been discussed hereunder solely to help students appreciate the change in the position of law consequent to notification of ICDSs.

ICDS I : Accounting Policies

(1) Non-consideration of the concepts of Prudence and Materiality

ICDS I on Accounting Policies, while recognizing the fundamental accounting assumptions of going concern, consistency and accrual, does not recognize the concepts of "materiality" and "prudence" in selection and application of accounting policies.

The concept of prudence requires that provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information. Non-consideration of prudence in selection and application of accounting policies may have the impact of earlier recognition of income and gains or later recognition of expenses or losses for tax computation.

Examples of non-consideration of prudence in the ICDSs:

(i) The requirement in ICDS VII on Government Grants that recognition of a Government grant shall not be postponed beyond the date of actual receipt, even if conditions attached to the grant are not fulfilled.

(ii) Absence of requirement of "reasonable certainty of ultimate collection" for recognition of revenue from service transactions and use of resources by others yielding interest, royalties and dividends in ICDS IV on Revenue Recognition.

(iii) Non-recognition of expected losses on construction contracts and contract costs, recovery of which is not probable, as an expense immediately, in ICDS III on Construction Contracts.

(iv) Non-recognition of provision for loss on onerous contracts.

(2) Requirement of "reasonable cause" for change in accounting policy

AS 5 *vis-à-vis* ICDS I

AS 5 which deals with changes in accounting policies, permits change in accounting policies if adoption of different accounting policies is required by -

(a) statute; or

(b) for the purpose of compliance with an accounting standard; or

(c) if such change results in a more appropriate presentation of financial statements.

ICDS I, however, states that an accounting policy should not be changed without any 'reasonable cause'.

The term "reasonable cause" has not been defined and would involve exercise of judgment by management and tax authorities. A clarification as to the meaning and scope of "reasonable cause" would help avoid litigation.

ICDS II : Valuation of Inventories

(1) Standard cost method not recognized for measurement of cost of inventories

AS 2 *vis-à-vis* ICDS II

The cost of inventories of items that are not ordinarily interchangeable and goods or services produced and segregated for specific projects should be assigned by specific identification of their individual costs. Further, cost of inventories, other than such inventories, should be assigned using the First-in First-out or weighted average cost formula. The formula should reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition. These requirements are the same in AS 2 and ICDS II on Valuation of Inventories.

However, whereas AS 2 permits standard cost method as one of the techniques for the measurement of the cost of inventories, for convenience if the results approximate the actual cost, there is no enabling clause or para in ICDS II permitting adoption of standard cost as a technique for measurement of the cost of inventories.

(2) Valuation of inventory on the date of dissolution of a firm, where the business is continued by a partner(s)

In case of dissolution of a partnership firm or association of persons or body of individuals, Paragraph 24 of ICDS II on Valuation of Inventories requires the inventory on the date of dissolution to be valued at the net realisable value, notwithstanding whether business is discontinued or not.

This requirement in ICDS II is in deviation from the Supreme Court ruling in *Shakti Trading Co. vs. CIT (2001) 250 ITR 871,* where it was held that if the firm is dissolved due to death of a partner and the surviving partners reconstitute the firm and continue the business as before, the firm is entitled to adopt cost or market price, whichever is lower.

ICDS III: Construction Contracts

(1) Point in time of recognition of expected loss on construction contracts

AS 7 *vis-à-vis* ICDS III:

AS 7 permits recognition of expected loss on construction contract as well as contract costs, recovery of which is not probable, as an expense immediately. It also permits recognition of expected loss immediately as an expense, when it is probable that total contract costs will exceed total contract revenue.

The absence of specific requirement in ICDS III to recognize such expected losses on construction contracts immediately as expense represents a significant deviation from AS 7 as well as judicial rulings permitting immediate recognition of such losses as long as the same are in accordance with the accounting standard or justified by the principle of prudence or by the nature and circumstances of the contract.

By implication, such losses are also to be recognized on Percentage of Completion Method as per ICDS III. Consequently, recognition of losses for tax purposes is postponed.

(2) Treatment of penalties arising from delays caused by the contractor in completion of the contract

AS 7 *vis-à-vis* ICDS III:

Paragraph 11 of AS 7 permits decrease in contract revenue as a result of penalties arising from delays caused by the contractor in the completion of the contract. However, ICDS III does not permit such reduction in contract revenue.

Non-recognition of decrease in contract revenue as a result of such penalties would have the effect of inflating the taxable income and consequent tax liability.

(3) Point in time of recognition of retention money

AS 7 *vis-à-vis* ICDS III:

ICDS III requires retention money to be treated as part of contract revenue and recognized on percentage of completion method. As per paragraph 10 of ICDS III, "Contract Revenue" shall comprise of the initial amount of revenue agreed in the contract, including retentions. However, as per paragraph 10 of AS 7, contract revenue should comprise the initial amount of revenue agreed in the contract. While there is a specific requirement in paragraph 10 of ICDS III to include retentions, there is no such requirement in paragraph 10 of AS 7.

Deviation from judicial precedents:

In *CIT v. Associated Cables (P) Ltd. (2006) 286 ITR 596 (Bom.)* and *CIT v. Ignifluid Boilers (I) Ltd. (2006) 283 ITR 295 (Mad)*, it was held that the payment of retention money in the case of contract is dependent on satisfactory completion of contract work. The right to receive the retention money accrues only after the obligations under the contract are fulfilled and, therefore, it would not amount to income of the assessee in the year in which the amount is retained.

The requirement in ICDS III to recognize retention money on percentage of completion method marks a significant deviation from the decisions pronounced by the Courts.

ICDS IV: Revenue Recognition

(1) Revenue recognition in case of rendering of services and use by others of person's resources yielding interest, dividend or royalty, where there is significant uncertainty as to collectability

AS 9 *vis-à-vis* ICDS IV:

AS 9 requires recognition of revenue only if no significant uncertainty exists regarding the amount of consideration that will be derived from sale of goods,

rendering of services or use by others of enterprise resources yielding interest, royalties and dividends.

ICDS IV also requires revenue from sale of goods to be recognized when there is reasonable certainty of its ultimate collection. However, "reasonable certainty for ultimate collection" is not a criterion for recognition of revenue from rendering of services or use by others of person's resources yielding interest, royalties or dividends. By implication, revenue recognition cannot be postponed in case of uncertainty regarding collectability of consideration to be derived from rendering of services or use by others of person's resources yielding interest, dividend or royalty.

Deviation from judicial precedents:

In this regard, ICDS IV is also in deviation with the Supreme Court ruling in *UCO Bank v. CIT (1999) 237 ITR 889*, where it was held that interest on sticky loans would not accrue if the same was not recoverable and the Delhi High Court ruling in *DIT v. Brahmaputra Capital Financial Services Ltd. (2011) 335 ITR 182 (Del.)*, where it was held that interest on non-performing assets which is not received with no possibility of recovery may not be recognized.

(2) Recognition of revenue from service transactions

AS 9 *vis-à-vis* ICDS IV:

AS 9 permits revenue from service transactions to be recognised as the service is performed, either by the proportionate completion method or by the completed service contract method, whichever relates the revenue to the work accomplished.

ICDS IV requires revenue from service transactions to be recognised only on the basis of percentage completion method, which may, however, not be appropriate in case of all service transactions. For example, in case of courier services, revenue is recognized only when the goods are delivered at the specified destination.

Deviation from judicial precedent:

This requirement in ICDS IV is also not in line with the Madras High Court ruling in *CIT v. Coral Electronics P Ltd. (2005) 274 ITR 336*, where it was held that the amount received as service charges for services to be rendered in future could not be considered as an income and was not exigible to tax. It is only when the service is done, does the assessee have a right over the amount that was deposited. Till then, he has no right over the same. Hence, it cannot be considered as income of the assessee.

ICDS VI: Effects of changes in Foreign Exchange Rates

(1) Treatment of exchange differences in translation of financial statements of non-integral foreign operations

AS 11 *vis-à-vis* ICDS VI:

AS 11 requires the resulting exchange differences in translating the financial statements of a non-integral foreign operation to be accumulated in a foreign currency translation reserve until the disposal of the net investment.

ICDS VI on the other hand requires such exchange differences to be recognized as income or as expenses in that previous year.

It is noteworthy that the requirements in AS 11 and ICDS VI as regards translation of assets and liabilities and income and expenses items of the non-integral foreign operation in the financial statements are aligned. However, the treatment of resultant exchange differences are different. The requirement as per ICDS VI to recognize such exchange differences as income or expenses would result in volatility in tax liability due to currency fluctuations.

ICDS VII: Government Grants

(1) Recognition of Government Grants

AS 12 *vis-à-vis* ICDS VII:

AS 12 provides that Government Grants should not be recognized until there is a reasonable assurance that the enterprise will comply with the conditions attached to them and the grants will be received.

Paragraph 4(1) of ICDS VII also provides that Government Grants should not be recognized until there is a reasonable assurance that the enterprise will comply with the conditions attached to them and the grants will be received. This requirement is in line with AS 12. However, Paragraph 4(2) of ICDS VII goes on to provide that recognition of government grant shall not be postponed beyond the date of actual receipt.

Therefore, as per ICDS VII, initial recognition of government grants cannot be postponed beyond the date of actual receipt even in a case where all the recognition conditions in accordance with AS 12 are not met.

(2) Treatment of Government Grants of capital nature and Government Grants in the nature of promoter's contribution

AS 12 *vis-à-vis* ICDS VII:

AS 12 permits government grants in the nature of promoters' contribution, i.e., grants given with reference to the total investment in an undertaking or by way of contribution towards its total capital outlay (for example, central investment subsidy scheme) to be treated as capital reserve which can neither be distributed as dividend nor considered as deferred income.

ICDS VII, however, does not contain specific requirement to capitalize government grants in the nature of promoter's contribution. Except in case of government grant relating to a depreciable fixed asset, which has to be reduced from written down value or actual cost, all other grants have to be recognized as upfront income or as income over the periods necessary to match them with the related costs which they are intended to compensate.

Deviation from judicial precedent:

The requirement in ICDS VII to recognize such grants as upfront or deferred income is not in line with the rationale of the Supreme Court that the purpose of the grant would ultimately determine its nature. The Supreme Court in, *CIT v Ponni Sugar*

Mills (2008) 306 ITR 392, observed that it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account.

In line with the requirement in ICDS VII, new sub-clause (xviii) has been inserted in the definition of income under section 2(24) to provide that assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee would be considered as income. It is only the subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the asset in accordance with *Explanation 10* to section 43(1) which would not be considered as income.

ICDS VIII: Securities

(1) Manner of comparison of cost and NRV for valuation of securities held as stock-in-trade

ICDS VIII requires securities held as stock-in-trade to be valued at lower of actual cost initially recognized or net realizable value at the end of the year, whichever is lower. Further, such comparison has to be done category-wise and not for each individual security.

Deviation from judicial precedents:

This requirement in the ICDS deviates from the judicial position that anticipated profit should not be taken into consideration for valuation of stock-in-trade. The Supreme Court, in the case of *UCO Bank Ltd. v CIT 240 ITR 355*, observed that it is not proper to take into account anticipated profit in the shape of appreciated value of closing stock, as no prudent trader would show increased profit before actual realization. This is the theory underlying the valuation of closing stock at the lower of cost or market price.

The requirement in ICDS VIII to compare the actual cost and net realizable value category-wise, in effect, results in recognition of anticipated profits since rise in value of some securities will absorb the decrease in value of the remaining securities in the same category.

(2) Valuation of unlisted or irregularly traded securities at actual cost initially recognized.

ICDS VIII requires valuation of the following securities at actual cost initially recognized –

(i) Securities not listed on a recognized stock exchange; or

(ii) Securities listed but not quoted on a recognized stock exchange with regularity from time to time.

This requirement in ICDS VIII to value such securities at cost would also impact computation of taxable income and consequent tax liability.

ICDS IX: Borrowing Costs

(1) Minimum period for classification of an asset as a qualifying asset

AS 16 *vis-à-vis* ICDS IX:

As per AS 16, "qualifying asset" has been defined to mean an asset that necessarily takes a substantial period of time to get ready for its intended use or sale. AS 16 clarifies that ordinarily a period of 12 months is considered as substantial period of time unless a shorter or longer period can be justified on the basis of facts and circumstances of the case.

ICDS IX, however, does not provide any minimum period for treating an asset as a qualifying asset (except in the case of inventories). Consequently, borrowing costs in respect of assets have to be capitalized even if the asset, say, land or building or plant or machinery, does not take a substantial period of time to get ready for intended use.

(2) Treatment of income earned from temporary investment of borrowed funds

AS 16 *vis-à-vis* ICDS IX:

Paragraph 11 of AS 16 permits income earned on temporary investment of borrowed funds pending their expenditure on the qualifying asset to be deducted from borrowing costs incurred. ICDS IX however, does not permit such reduction from borrowing costs.

This deviation between AS 16 and ICDS IX would result in increase in taxable income.

(3) Suspension of capitalization of borrowing costs

AS 16 *vis-à-vis* ICDS IX:

Paragraph 17 of AS 16 permits suspension of capitalization of borrowing costs during extended periods in which active development is interrupted. ICDS IX does not permit suspension of capitalization of borrowing costs in such cases.

This deviation between AS 16 and ICDS IX would result in increase in taxable income.

ICDS X: Provisions, Contingent Liabilities & Contingent Assets

(1) Condition for recognition of Provision

AS 29 *vis-à-vis* ICDS X:

AS 29 requires recognition of a provision when it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation.

ICDS X requires recognition of a provision only when it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation.

The requirement of "reasonable certainty" in ICDS X to recognize a provision is more stringent as compared to the requirement of "probability" in AS 29. This will have the effect of postponing the recognition of provision for tax purposes and consequently, result in earlier payment of taxes.

(2) Condition for recognition of Contingent Asset

AS 29 *vis-à-vis* ICDS X:

Both AS 29 and ICDS X provide that a contingent asset should not be recognized. Further, both AS 29 and ICDS X require contingent assets to be assessed continually.

Thereafter, recognition of contingent assets and related income is required in –

AS 29, if inflow of economic benefits is "virtually certain";

ICDS X, if inflow of economic benefits is "reasonably certain".

The requirement of "reasonable certainty" in ICDS X to recognize a contingent asset and the related income is more stringent as compared to the requirement of "virtual certainty" in AS 29. This deviation between AS 29 and ICDS X would have the effect of advancing recognition of income for tax purposes and consequently, result in earlier payment of taxes.

4

UNIT 4: CAPITAL GAINS

AMENDMENTS BY THE FINANCE ACT, 2015

(a) Any transfer of capital asset, being share of a foreign company, referred in *Explanation 5* to section 9(i), deriving its value substantially from the shares in an Indian company, in a scheme of amalgamation/demerger not to be regarded as transfer under section 47, where the amalgamating/demerged and amalgamated/ resulting companies are foreign companies [Section 47(viab) & 47(vicc)]

Related amendment in section: 49

Effective from: A.Y.2016-17

(i) In order to give effect to the recommendation made by Expert Committee under the Chairmanship of Dr. Parthasarathi Shome on the various aspects relating to the amendments made in section 9(1)(i) by the Finance Act, 2012, clause (viab) and (vicc) have been inserted to section 47.

(ii) Section 47(viab) provides that any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company referred to in *Explanation 5* to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company would be exempt, if the following conditions are satisfied:

(A) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

(B) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.

(iii) Section 47(vicc) provides that any transfer in case of a demerger of a capital asset, being a share of a foreign company, referred to in *Explanation 5* to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company shall be exempt, if the following conditions are satisfied:

(a) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated:

However, the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of such demergers.

(iv) As per section 49(1)(iii)(e), the cost of acquisition in the hands of amalgamated foreign company/resulting foreign company where such capital asset (i.e., share in a foreign company deriving its value substantially from the share or shares of an Indian company) is transferred in a scheme of amalgamation/demerger is:

Mode of Acquisition of capital asset	Cost of acquisition for computing capital gains
In the scheme of amalgamation referred to under section 47(viab), where both the amalgamated and amalgamating companies are foreign companies	The cost of acquisition of the capital asset in the hands of amalgamated foreign company would be deemed to be the cost for which the amalgamating foreign company acquired the capital asset as increased by the cost of improvement of the assets incurred or borne by the amalgamating foreign company or the amalgamated foreign company, as the case may be.
In the scheme of demerger referred under section 47(vicc), where both the demerged and resulting companies are foreign companies	The cost of acquisition of the capital asset in the hands of resulting foreign company would be deemed to be the cost for which the demerged foreign company acquired the capital asset as increased by the cost of improvement of the assets incurred or borne by the demerged foreign company or the resulting foreign company, as the case may be.

(v) Accordingly, the period of holding of such asset in the hands of the amalgamated and resulting foreign company would include the period for which the amalgamating and demerged foreign company, as the case may be, held the asset.

(b) Transfer of units by unit holders in consolidation scheme of mutual funds not to be regarded as transfer [Section 47(xviii)]

Related amendments in sections: Section 2(42A) & 49(2AD)

Effective from: A.Y. 2016-17

(i) With a view to have simple and fewer numbers of schemes, the Securities and Exchange Board of India (SEBI) has been encouraging mutual funds to consolidate its various schemes having like features.

However, such mergers/consolidations are being treated as transfer of units in the hands of unit-holders, thus attracting "capital gains" tax liability in their hands.

(ii) Exemption of transfer of units in the scheme of consolidation of Mutual Fund: For the purpose of aiding consolidation of such schemes of mutual funds in the interest of the investors and to provide tax neutrality to unit holders upon consolidation or merger of mutual fund schemes, clause (xviii) has been inserted under section 47.

Accordingly, any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund would not be considered as transfer, and hence, would not be chargeable to tax.

However, this exemption would be available only if, the consolidation takes place of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

(iii) Period of holding: Section 2(42A) has been consequently amended to provide that the period of holding of such units acquired in the consolidated scheme of mutual fund shall include the period for which the units in consolidating schemes were held by the assessee.

(iv) Cost of acquisition of units in consolidated scheme of mutual fund: Further, sub-section (2AD) has been inserted in section 49 to provide that cost of acquisition of the units acquired by the assessee in consolidated scheme of mutual fund in consideration of transfer referred in section 47(xviii) shall be deemed to be the cost of acquisition to him of the units in the consolidating scheme of mutual fund.

(v) Meaning of the following terms:

Term	Meaning
Consolidating scheme	The scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996 made under SEBI Act, 1992.
Consolidated scheme	The scheme with which the consolidating scheme merges or which is formed as a result of such merger.
Equity Oriented Fund	Meaning as assigned under section 10(38), i.e., A fund— (i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds of such fund; and (ii) which has been set up under a scheme of a Mutual Fund specified under section 10(23D). The percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

Mutual Fund	A mutual fund specified under section 10(23D), i.e., (i) a Mutual Fund registered under the SEBI Act, 1992 or regulations made thereunder; (ii) such other Mutual Fund set up by a public sector bank or a public financial institution or authorised by the Reserve Bank of India and subject to conditions notified by the Central Government.

(c) Cost of acquisition of the capital asset acquired in the scheme of demerger referred to in section 47(vib) in the hands of resulting company [Section 49(1)(iii)(e)]

Effective from: A.Y. 2016-17

(i) Under section 47(vib), transfer of a capital asset by the demerged company to the resulting company in a scheme of demerger would not be regarded as a transfer, if the resulting company is an Indian company.

Under the existing provisions of the Income-tax Act, there is no express provision regarding what would be the cost of such asset in the hands of the resulting company and the period of holding.

(ii) Accordingly, section 49(1)(iii)(e) has been amended to provide for the cost of acquisition of such asset.

Mode of Acquisition of capital asset	Cost of acquisition for computing capital gains
In the scheme of demerger referred to in under section 47(vib), where the resulting company is an Indian company	The cost of acquisition of the capital asset in the hands of resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred or borne by the demerged company or the resulting company, as the case may be.

(iii) Accordingly, the period of holding of such asset in the hands of resulting company would include the period for which the demerged company held the asset.

(d) Cost of acquisition and period of holding of shares acquired on redemption of Global Depository Receipts (GDRs) by a non-resident assessee [Sections 49(2ABB) & 2(42A)]

Effective from: A.Y.2016-17

(i) Cost of acquisition of shares acquired on redemption of GDRs [Section 49(2ABB)]

Sub-section (2ABB) has been inserted in section 49, to provide that the cost of acquisition of the capital asset, being share or shares of a company acquired by a non-resident assessee, consequent to redemption of GDRs [referred to in section

115AC(1)(b)] held by him would be the price of such share or shares prevailing on any recognized stock exchange on the date on which a request for such redemption was made.

(ii) Period of holding of shares acquired on redemption of GDRs [Section 2(42A)]

Sub-clause (he) has been inserted in clause (i) in *Explanation 1* to section 2(42A) to provide that the period of holding of a capital asset, being share or shares of a company, acquired by a non-resident assessee on redemption of GDRs [referred to in section 115AC(1)(b)] would be reckoned from the date on which a request for such redemption was made.

(e) Rise in Consumer Price Index (Urban) to be the basis for notification of CII [Section 48]

Effective from: A.Y.2016-17

(i) Section 48 prescribes the mode of computation of income chargeable under the head "Capital gains". Indexation benefit is available for computing cost of acquisition and cost of improvement, where the capital gains are long-term in nature.

(ii) Clause (v) of the *Explanation* to section 48 defines "Cost Inflation Index" (CII) in relation to a previous year, to mean such index as may be notified by the Government having regard to 75% of average rise in the Consumer Price Index (CPI) for urban non-manual employees (UNME) for the immediately preceding previous year to such previous year.

(iii) Since the release of CPI for UNME has been discontinued, accordingly, clause (v) of the *Explanation* to section 48 has been amended by Finance (No.2) Act, 2014 to provide that "Cost Inflation Index" in relation to a previous year shall mean such index as may be notified by the Central Government having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

SIGNIFICANT NOTIFICATIONS/CIRCULARS

(1) Applicability of tax on capital gains in the hands of the unit holders where the term of the units of Mutual Funds under the Fixed Maturity Plans has been extended [Circular No. 6/2015, dated 09-04-2015]

Fixed Maturity Plans (FMPs) are closed ended funds having a fixed maturity date wherein the duration of investment is decided upfront. Prior to amendment by the Finance (No. 2) Act, 2014, units of a mutual fund under the FMPs held for a period of more than twelve months qualified as long term capital asset. The amendment in sub-section (42A) of section 2 by the Finance (No. 2) Act, 2014 required the period of holding in case of unlisted shares and units of a mutual fund [other than an equity oriented (fund)] to be more than thirty-six months to qualify as long term capital asset.

As a result, gains arising out of any investment in the units of FMPs made earlier and sold/ redeemed after 10.07.2014 would be taxed as short term capital gains if the unit

was held for a period of thirty-six months or less. To enable the FMPs to qualify as a long term capital asset, some Asset Management Companies (AMCs) administering mutual funds have offered extension of the duration of the FMPs to a date beyond thirty-six months from the date of the original investment by providing to the investor an option of roll-over of FMPs in accordance with the provisions of Regulation 33(4) of the SEBI (Mutual Funds) Regulation, 1996.

The CBDT has, vide this Circular, clarified that the roll over in accordance with the aforesaid regulation will not amount to transfer as the scheme remains the same. Accordingly, no capital gains will arise at the time of exercise of the option by the investor to continue in the same scheme. The capital gains will, however, arise at the time of redemption of the units or opting out of the scheme, as the case may be.

7

DEDUCTIONS FROM GROSS TOTAL INCOME

AMENDMENTS BY THE FINANCE ACT, 2015

(a) Deduction under section 80C to be available in respect of deposit in Sukanya Samriddhi Account Scheme for the welfare of girl child

Related amendment in section: 10(11A)

Effective from: A.Y.2015-16

(i) A special small savings instrument for the welfare of the girl child was announced in the Union Budget in July 2014. To give effect to this announcement, Sukanya Samriddhi Account Rules, 2014 have been introduced.

(ii) The following are the tax benefits envisaged in the Sukanya Samriddhi Account scheme:-

(a) The investments made in the Scheme will be eligible for deduction under section 80C.

(b) The interest accruing on deposits in such account will be exempt from income tax.

(c) The withdrawal from the said scheme in accordance with the rules of the said scheme will be exempt from tax.

(iii) Clause (viii) of section 80C(2), provides that in computing the total income of an assessee, being an individual or a Hindu undivided family, a deduction is allowed with respect to sums paid or deposited in the previous year as a subscription to any such security of the Central Government or any deposit scheme notified by the Central Government.

(iv) Accordingly, the Sukanya Samriddhi Account Scheme has been notified under clause (viii) of section 80C(2) *vide* Notification No. 9/2015, dated 21.01.2015.

(v) In order to allow deduction under section 80C to the parent or legal guardian of the girl child, clause (viii) of section 80C(2) has been amended to provide that deduction would be allowed thereunder in respect of amount deposited in the said Scheme in the name of any person specified in section 80C(4). Accordingly, clause (ba) has

been inserted in section 80C(4) so as to provide that any sum paid or deposited during the previous year in the said Scheme, by an individual in the name of -

(a) the individual himself or herself;

(b) any girl child of the individual; or

(c) any girl child for whom such individual is the legal guardian,

would be eligible for deduction under section 80C.

(vi) Further, new clause (11A) has been inserted in section 10 to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014, made under the Government Savings Bank Act, 1873, shall not be included in the total income of the assessee.

Accordingly, the interest accruing on deposits in, and withdrawals from any account under the said scheme would be exempt.

(b) Increase in the limit of deduction in respect of contribution to certain pension funds under section 80CCC

Effective from: A.Y. 2016-17

(i) Under section 80CCC(1), an assessee, being an individual is allowed a deduction upto ₹ 1 lakh in the computation of his total income, of an amount paid or deposited by him to effect or keep in force a contract for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from a fund set up under a pension scheme.

(ii) With a view to increase social security, section 80CCC(1) has been amended to raise the limit of deduction thereunder from ₹ 1 lakh to ₹ 1.50 lakh. However, this limit would be subject to the overall limit of ₹ 1.50 lakh provided in section 80CCE in respect of section 80C, 80CCC & 80CCD(1).

(c) Additional deduction in respect of contribution to NPS of Central Government under section 80CCD(1B) and enhancement of limit of deduction under section 80CCD(1)

Effective from: A.Y 2016-17

(i) As per section 80CCD(1), if an individual, employed by the Central Government on or after 1st January, 2004, or being an individual employed by any other employer, or any other assessee, being an individual, has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding 10% of his salary, in the case of an employee, and 10% of the gross total income, in case of any other individual, is allowed.

(ii) Similarly, the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme is also allowed as deduction under section 80CCD(2), to the extent it does not exceed 10% of the salary of the individual in the previous year.

(iii) Section 80CCD(1A) provides that the amount of deduction under 80CCD(1) shall not exceed ₹ 1,00,000.

(iv) In order to encourage contribution towards NPS, sub-section (1A) of section 80CCD restricting the deduction under section 80CCD(1) to ₹ 1 lakh, has been omitted. Thus, deduction under section 80CCD(1) would only be subject to the limitation of 10% of salary or gross total income (GTI), as the case may be. However, it would continue to be subject to the overall limit of ₹ 1.50 lakh under section 80CCE.

(v) In addition to the enhancement of the limit under section 80CCD(1), new sub-section (1B) has been inserted in section 80CCD to provide for an additional deduction of up to ₹ 50,000 in respect of the whole of the amount paid or deposited by an individual assessee under NPS in the previous year, whether or not any deduction is allowed under section 80CCD(1).

(vi) The deduction of upto ₹ 50,000 under section 80CCD(1B) is in addition to the overall limit of ₹ 1.50 lakh provided under section 80CCE.

(vii) The following table summarizes the ceiling limit under these sections w.e.f. A.Y.2016-17 –

Section	Particulars	Ceiling limit (₹)
80C	Investment in specified instruments	1,50,000
80CCC	Contribution to certain pension funds	1,50,000
80CCD(1)	Contribution to NPS of Government	10% of salary or 10% of GTI, as the case may be.
80CCE	Aggregate deduction under sections 80C, 80CCC & 80CCD(1)	1,50,000
80CCD(1B)	Contribution to NPS notified by the Central Government (outside the limit of ₹ 1,50,000 under section 80CCE)	50,000

Example

The following are the particulars of investments and payments made by Mr. A, employed with ABC Ltd., during the previous year 2015-16:

- *Deposited ₹1,20,000 in public provident fund*
- *Paid life insurance premium of ₹15,000 on the policy taken on 1.5.2012 to insure his life (Sum assured – ₹1,20,000).*
- *Deposited ₹30,000 in a five year term deposit with bank.*
- *Contributed ₹1,80,000, being 15% of his salary, to the NPS of the Central Government. A matching contribution was made by ABC Ltd.*

(i) Compute the deduction available to Mr. A under Chapter VI-A for A.Y.2016-17.

(ii) Would your answer be different, if Mr. A contributed ₹ 1,20,000 (being, 10% of his salary) towards NPS of the Central Government ?

Answer

(i) Deduction available to Mr. A under Chapter VI-A for A.Y.2016-17

Section	Particulars	₹	₹
80C	Deposit in public provident fund	1,20,000	
	Life insurance premium paid ₹ 15,000 (deduction restricted to ₹ 12,000, being 10% of ₹ 1,20,000, being sum assured, since the policy was taken after 31.3.2012)	12,000	
	Five year term deposit with bank	30,000	
		1,62,000	
	Restricted to		1,50,000
80CCD(1)	Contribution to NPS of the Central Government, ₹ 1,30,000[₹ 1,80,000 – ₹ 50,000, being deduction under section 80CCD(1B)], restricted to 10% of salary [₹ 1,80,000 x 10/15] [See Note 1]		1,20,000
			2,70,000
80CCE	Aggregate deduction under section 80C and 80CCD(1), ₹ 2,70,000, but restricted to		1,50,000
80CCD(1B)	₹ 50,000 would be eligible for deduction in respect of contribution to NPS of the Central Government		50,000
80CCD(2)	Employer contribution to NPS, restricted to 10% of salary [See Note 2]		1,20,000
Deduction under Chapter VI-A			3,20,000

Notes:

(1) The deduction under section 80CCD(1B) would not be subject to overall limit of ₹ 1.50 lakh under section 80CCE. Therefore, it is more beneficial for Mr. A to claim deduction under section 80CCD(1B) first in respect of contribution to NPS. Thereafter, the remaining amount of ₹ 1,30,000 can be claimed as deduction under section 80CCD(1), subject to a maximum of 10% of salary.

(2) The entire employer's contribution to notified pension scheme has to be first included under the head "Salaries" while computing gross total income and thereafter, deduction under section 80CCD(2) would be allowed, subject to a maximum of 10% of salary.

(ii) If the contribution towards NPS is ₹ 1,20,000, here again, it is beneficial for Mr. A to first claim deduction of ₹ 50,000 under section 80CCD(1B) and the balance of ₹ 70,000 can be claimed under section 80CCD(1), since the deduction available

under section 80CCD(1B) is over and above the aggregate limit of ₹ 1,50,000 under section 80CCE. In any case, the aggregate deduction of ₹ 2,20,000 [i.e., ₹ 1,50,000 under section 80C and ₹ 70,000 under section 80CCD(1)] cannot exceed the overall limit of ₹ 1,50,000 under section 80CCE. The total deduction under Chapter VIA would remain the same i.e., ₹ 3,20,000.

(d) Enhancement of the limit of deduction under section 80D and allowability of deduction for incurring medical expenditure in respect of very senior citizen

Effective from: A.Y. 2016-17

(i) Section 80D, *inter alia,* provides for deduction of

(a) upto ₹ 15,000 to an assessee, being an individual in respect of –

(1) health insurance premia, paid by any mode, other than cash, to effect or to keep in force an insurance on the health of the assessee or his family;

(2) any contribution made to the Central Government Health Scheme or any other notified scheme; and

(3) any payment made on account of preventive health check up of the assessee or his family; and

(b) an additional deduction of ₹ 15,000 is provided to an individual to effect or to keep in force insurance on the health of his or her parent or parents.

(ii) A similar deduction is also available to a Hindu undivided family (HUF) in respect of health insurance premia, paid by any mode, other than cash, to effect or to keep in force insurance on the health of any member of the HUF.

(iii) If the sum specified in (a) & (b) of (i) above is paid to effect or keep in force an insurance of a person who is a senior citizen, being a resident individual of the age of 60 years or more at any time during the previous year, the limit specified would be ₹ 20,000 instead of ₹ 15,000.

(iv) The Finance Act, 2008 had raised the quantum of deduction allowable under section 80D to individuals and HUF in respect of premium paid for health insurance to ₹ 15,000 and in the case of senior citizens, to ₹ 20,000.

(v) On account of the continuous rise in the cost of medical expenditure, the limit of deduction under section 80D has now been increased from ₹ 15,000 to ₹ 25,000.

Further, the limit of deduction in respect of amount paid to effect or keep in force an insurance of a person who is a senior citizen, being a resident individual of the age of 60 years or more, has also been raised from ₹ 20,000 to ₹ 30,000.

(vi) As a welfare measure towards very senior citizens i.e. person of the age of 80 years or more and resident in India, who are unable to get health insurance coverage, section 80D has been amended to provide that deduction of upto ₹ 30,000 would be allowed in respect of any payment made on account of medical expenditure in

respect of a very senior citizen, if no payment has been made to keep in force an insurance on the health of such person.

(vii) The aggregate deduction available to any individual in respect of health insurance premia and the medical expenditure incurred would, however, be limited to ₹ 30,000.

Similarly, aggregate deduction for health insurance premia and medical expenditure incurred in respect of parents would be limited to ₹ 30,000.

(viii) 'Very senior citizen' to mean an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

The following table summarizes the provisions of section 80D –

S. No.	Nature of payment/ expenditure	Expenditure on behalf of		Deduction for A.Y. 2015-16	Deduction for A.Y. 2016-17
I	(i) Any premium paid, otherwise than by way of cash, to keep in force an insurance on the health (ii) Contribution to Central Govern-ment Health Scheme (CGHS) (iii) Preventive health check up expenditure	In case of individual	Self, spouse and dependent children	₹ 15,000	₹ 25,000
		In case of HUF	Family member		
		In case any of the above persons is of the age of 60 years or more + resident in India		₹ 20,000	₹ 30,000
II	(i) Any premium paid, otherwise than by way of cash, to keep in force an insurance on the health (ii) Preventive health check up	For Parents		₹ 15,000	₹ 25,000
		In case either or both the parents is of the age of 60 years or more + Resident in India		₹ 20,000	₹ 30,000

		Maximum ₹ 5,000 allowed as deduction for aggregate of preventive health check up expenditure mentioned in I and II (Subject to overall limit of ₹ 25,000 or ₹ 30,000, as the case may be)		
III	Amount paid on account of medical expenditure	For self/ spouse/ parents + who is of the age of 80 years or more + Resident in India + no payment has been made to keep in force an insurance on the health of such person	NA	₹ 30,000

Note:

In case the individual or any of his family members is a senior citizen or very senior citizen, the aggregate of deduction, in respect of payment of premium, contribution to CGHS and medical expenditure incurred, as specified in (I) & (III) above, cannot exceed ₹ 30,000.

In case one of the parents is a senior citizen and another is a very senior citizen or both of them are very senior citizens, the aggregate of deduction, in respect of payment of medical insurance premium and medical expenditure incurred, as specified in (II) & (III) above, cannot exceed ₹ 30,000.

Example:

Mr. Arjun (52 years old) furnishes the following particulars in respect of the following payments:

S. No.	*Particulars*	*Amount (₹)*
1.	*Premium paid for insuring the health of -*	
	• *Self*	*10,000*
	• *spouse*	*8,000*
	• *dependant son*	*4,000*
	• *mother*	*18,000*
2.	*Paid for Preventive Health Check up of*	
	• *himself*	*2,000*
	• *spouse*	*1,500*
	• *mother*	*4,000*
3.	*Incurred medical expenditure of ₹ 25,000 and ₹ 15,000 for his mother, aged 80 years and father, aged 85 years. Both mother and father are resident in India.*	

Compute the deduction available to Mr. Arjun under section 80D for the A.Y. 2016-17.

Solution

Computation of deduction under section 80D for the A.Y. 2016-17

S. No.	Particulars		Amount (₹)
1.	I. In respect of premium paid for insuring the health of -		
	• Self	10,000	
	• spouse	8,000	
	• dependant son	4,000	
		22,000	
	II. In respect of expenditure on preventive health check up of -		
	• Self	2,000	
	• spouse	1,500	
		3,500	
	Restricted to [₹ 25,000 – ₹ 22,000, since maximum deduction is ₹ 25,000]	3,000	
	Aggregate of deduction (I+II) under (1) restricted to		25,000
2.	I. In respect of payment towards health insurance premium for his mother	18,000	
	II. In respect of preventive health check up of his mother [₹ 4,000, restricted to ₹ 2,000, (₹ 5,000 – ₹ 3,000), since maximum deduction for preventive health check up under section 80D is ₹ 5,000]	2,000	
	III. Medical expenditure for father would only be eligible for deduction [See Note below]	15,000	
	Amount of deduction under (2) restricted to	35,000	30,000
	Total deduction under section 80D [(1) + (2)]		55,000

Note: Irrespective of the fact that the mother of Arjun is a very senior citizen the deduction under section 80D would not available to him in respect of the medical expenditure incurred for his mother, since Mr. Arjun has taken a health insurance policy for his mother.

(e) Increase in the limit of deduction under section 80DD and 80U in respect of persons with disability and severe disability

Effective from: A.Y. 2016-17

(i) Section 80DD, *inter alia*, provides for a deduction of ₹ 50,000, to an individual or HUF, who is a resident in India, who has incurred—

(a) expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability or

(b) paid any amount to LIC or any other insurer in respect of a scheme for the maintenance of a disabled dependant.

If the dependent is suffering from severe disability, the deduction under section 80DD is ₹ 1,00,000.

(ii) Section 80U, *inter alia*, provides for a deduction of ₹ 50,000, to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. If the person is suffering from severe disability, deduction under section 80U is ₹ 1,00,000.

(iii) The limit of ₹ 50,000 under sections 80DD and 80U in respect of a person with disability were fixed by the Finance Act, 2003. The Finance (No.2) Act, 2009, had raised the limit under section 80DD and section 80U in respect of a person with severe disability from ₹ 75,000 to ₹ 1 lakh.

(iv) Taking into account the increasing cost of medical care and special needs of disabled persons, sections 80DD and 80U have been amended so as to increase the amount of deduction thereunder in respect of a person with disability from ₹ 50,000 to ₹ 75,000.

Correspondingly, the limit of deduction in respect of a person with severe disability has also been increased from ₹ 1 lakh to ₹ 1.25 lakh.

Deduction under section 80DD

Maintenance and medical treatment of:	A.Y.2015-16	A.Y.2016-17
Persons with disability	50,000	75,000
Persons with severe disability	1,00,000	1,25,000

Deduction under section 80U

	A.Y.2015-16	A.Y.2016-17
Persons with disability	50,000	75,000
Persons with severe disability	1,00,000	1,25,000

(f) Enhanced limit of deduction for expenditure incurred in respect of medical treatment of very senior citizen [Section 80DDB]

Effective from: A.Y. 2016-17

(i) Section 80DDB provides that an assessee, being a resident in India is allowed a deduction of a sum not exceeding ₹ 40,000, being the amount actually paid, for the medical treatment of certain chronic and protracted diseases such as Cancer, full blown AIDS, Thalassaemia, etc.

(ii) A higher deduction of upto ₹ 60,000 is allowed, where the expenditure is in respect of a senior citizen i.e. a resident individual who is of the age of 60 years or more at any time during the relevant previous year.

(iii) The above deduction is available to an individual for medical expenditure incurred on himself or a dependant. It is also available to a Hindu undivided family (HUF) for such expenditure incurred on any of its members.

(iv) Meaning of "Dependant":

	Assessee	Dependent
(1)	Individual	the spouse, children, parents, brother or sister of the individual or any of them, wholly or mainly dependent on such individual for his support and maintenance.
(2)	HUF	a member of the HUF, wholly or mainly dependant on such HUF for his support and maintenance.

(v) For claiming this deduction, a certificate in the prescribed form, from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist, as may be prescribed, working in a Government hospital is required.

The requirement of obtaining a certificate from a doctor working in a Government hospital has been causing undue hardship to the persons intending to claim such deduction. Moreover, Government hospitals, at many places, do not have doctors specializing in the above branches of medicine. Therefore, it may be difficult for the taxpayer to obtain a certificate from a Government hospital.

(vi) In order to overcome this hardship, section 80DDB has been amended to provide that the assessee will be required to obtain a prescription for such medical treatment from a specialist doctor for the purpose of availing this deduction. The requirement that such specialist should be working in a Government hospital has been removed.

(vii) Further, section 80DDB has been amended to provide for a higher limit of deduction of upto ₹ 80,000, for the expenditure incurred in respect of the medical treatment of himself or a dependent, being a "very senior citizen".

(viii) A "very senior citizen" is as an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

(ix) The maximum limit of deduction under section 80DDB for the various categories of dependent are summarized hereunder:

	Dependent	Maximum limit (₹)
(1)	A very senior citizen, being a resident individual	80,000
(2)	A senior citizen, being a resident individual	60,000
(3)	Dependent, other than mentioned in (1) & (2) above	40,000

(g) Scope of section 80G expanded to allow 100% deduction in respect of donation to Swachh Bharat Kosh, Clean Ganga Fund and National Fund for Control of Drug Abuse [Section 80G]

Related amendment in section: 10(23C)

(i) Under section 80G, an assessee is allowed a deduction in respect of donations made by him to certain funds and charitable institutions from the gross total income.

The deduction is allowed at 100% of the amount of donations made to certain funds and institutions formed for a social purpose of national importance, like the Prime Ministers' National Relief Fund, National Foundation for Communal Harmony, National Children Fund etc.

The Finance Act, 2015 has extended the benefit of deduction under section 80G, at the rate 100% in respect of donations made to the National Fund for Control of Drug Abuse, Swachh Bharat Kosh and Clean Ganga Fund.

(ii) National Fund for Control of Drug Abuse

Effective from: A.Y. 2016-17	
Eligible assessee	All assessees
Purpose of fund	Fund created by the Government of India in the year 1989, under the Narcotic Drugs and Psychotropic Substances Act, 1985, to control drug abuse.
Deduction	Since National Fund for Control of Drug Abuse is also a Fund of national importance, 100% deduction would be allowable in respect of donations made to the said fund.

(iii) Swachh Bharat Kosh

Effective from: A.Y. 2015-16

Eligible assessee	All assesses

Purpose of fund	Set up by the Central Government to mobilize resources for improving sanitation facilities in rural and urban areas and school premises through the Swachh Bharat Abhiyan.
Purpose of deduction	To encourage and enhance people's participation in the national effort to improve sanitation facilities.
Amount of deduction	100% of the amount donated to such fund
Restriction	Any sum spent in pursuance of Corporate Social Responsibility under section 135(5) of the Companies Act, 2013, will not be eligible for deduction.

(iv) Clean Ganga Fund

Effective from: A.Y. 2015-16

Eligible assessee	Resident assessees
Purpose of fund	Established by the Central Government to attract voluntary contributions to rejuvenate river Ganga.
Purpose of Deduction	To encourage and enhance people's participation in the national effort to improve rejuvenation of river Ganga.
Amount of deduction	100% of the amount donated to Clean Ganga fund
Restriction	Any sum spent in pursuance of Corporate Social Responsibility under section 135(5) of the Companies Act, 2013, will not be eligible for deduction.

(v) Exemption of income of Swachh Bharat Fund & Clean Ganga Fund [Section 10(23C)]

Effective from: A.Y.2015-16

Section 10(23C) provides for exemption from tax in respect of the income of certain charitable funds or institutions like the Prime Minister's National Relief Fund, the Prime Minister's Fund (Promotion of Folk Art), the Prime Minister's Aid to Students Fund and the National Foundation for Communal Harmony.

Taking into consideration, the importance of Swachh Bharat Kosh and Clean Ganga Fund, the scope of section 10(23C) has been expanded to exempt the income of Swachh Bharat Kosh and Clean Ganga Fund, set up by the Central Government, from income-tax.

(h) Deduction for employment of new regular workmen extended to all assessees deriving profits and gains from manufacture of goods in a factory [Section 80JJAA]

Effective from: A.Y. 2016-17

(i) Section 80JJAA(1) provides for deduction to an Indian company, deriving profits from manufacture of goods in a factory. The quantum of deduction allowed is equal to 30% of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(ii) Section 80JJAA(2)(a), *inter alia,* provides that no deduction under sub-section (1) shall be allowed if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.

(iii) For the purpose of encouraging generation of employment, section 80JJAA(1) has been amended to extend the benefit so far available only to corporate assessees to all assessees whose gross total income includes profits and gains derived from manufacture of goods in a factory.

(iv) Consequently, section 80JJAA(2)(a) has been amended to provide that no deduction would be allowed if the factory is acquired by the assessee by way of transfer from any other person or as a result of any business reorganization.

(v) Clause (i) of the *Explanation* to this section defines "Additional wages" to mean the wages paid to the new regular workmen in excess of 100 workmen employed during the previous year.

(vi) In order to enable the smaller units to claim the benefit of deduction under this section, clause (i) of the *Explanation* has been amended to provide that "additional wages" shall mean the wages paid to the new regular workmen in excess of 50 workmen employed during the previous year.

(vii) In effect, the benefit of deduction under this section has been extended to smaller units employing more than 50 new regular workmen.

Example

Mr. A has commenced the operations of manufacture of goods in a factory on 1.4.2015. He employed 125 new workmen during the P.Y.2015-16, which included –

(i) 15 casual workmen;

(ii) 15 workmen employed through contract labour;

(iii) 25 regular workmen employed on 1.4.2015;

(iv) 55 regular workmen employed on 1.5.2015; and

(v) 15 regular workmen employed on 1.7.2015

Compute the deduction, if any, available to Mr.A for A.Y.2016-17, if wages@₹5,000 per month is paid to each workman and the profits and gains derived from manufacture of goods in the factory for the A.Y.2016-17 is ₹4.75 lakhs.

Answer

Mr. A is eligible for deduction under section 80JJAA since his gross total income includes profits and gains derived from the manufacture of goods in a factory and he has employed more than 50 new regular workmen in his factory.

Additional wages = ₹ 5,000 × 30 [See Working Note below] = ₹ 1,50,000

Deduction under section 80JJAA = 30% of ₹ 1,50,000 = ₹ 45,000.

Working Note:

Number of new regular workmen

Particulars		No. of workmen	
Total number of workmen employed during the year			125
Less:	Casual workmen employed during the year	15	
	Workmen employed through contract labour	15	
	Workmen employed for a period of less than 300 days during the P.Y.2015-16 (workmen employed on 1.7.2015)	15	45
Total number of new regular workmen			80
Number of new regular workmen in excess of 50 = 80 - 50			30

Note – "Regular workman" does not include a casual workman or a workman employed through contract labour or any other workman employed for a period of less than 300 days during the previous year.

SIGNIFICANT NOTIFICATIONS/CIRCULARS

(1) Increase in ceiling limit for investment in Public Provident Fund [Notification No. G.S.R. 588 (E), dated 13-8-2014]

In exercise of the powers conferred by Section 3(4) of the Public Provident Fund Act, 1968, the Central Government has increased annual ceiling limit for deposit in PPF A/c from ₹ 1 lakh to ₹ 1.50 lakhs by amending the Public Provident Fund Scheme, 1968.

(2) Increase in limit for investment in bank term deposit [Notification No. 63/2014, dated 13-11-2014]

Under section 80C(2)(xxi), a deduction is allowed in computing the total income of an assessee, being an individual or a HUF, with respect to sums paid or deposited in the previous year as a term deposit;

- for a fixed period of not less than 5 years with a scheduled bank and
- which is in accordance with the scheme framed and notified by the Central Government.

Accordingly, the Central Government had notified Bank Term Deposit Scheme, 2006. As per Para 3 of the said scheme, the maximum amount an assessee can invest in the term deposit of a scheduled bank is ₹ 1,00,000, in a year.

The Finance (No.2) Act, 2014 had increased the maximum limit of deduction under section 80C from ₹ 1 lakh to ₹ 1.50 lakh w.e.f. A.Y. 2015-16.

Consequently, the Central Government, has vide this notification, increased the maximum limit of investment in of term deposit of a specified bank from ₹ 1,00,000 to ₹ 1,50,000 in a year, which would qualify for deduction under section 80C.

(3) Eligibility of deduction under section 80-IA for unexpired period, in case of an undertaking or enterprise developing an infrastructure facility, industrial park, SEZ and transferring the same to another enterprise or undertaking for operation and maintenance [Circular No. 10/2014 dated 06-05-2014]

Under section 80-IA, deduction is available in respect of profits & gains derived by an undertaking or enterprise engaged in developing, operating and maintaining any infrastructure facility, industrial park etc. The undertakings or enterprises eligible for availing deduction under this section have been specified under sub-section (4) of section 80-IA and can broadly be classified as under:

(i) enterprise carrying on the business of developing or operating & maintaining or developing, operating & maintaining infrastructure facilities [80-IA(4)(i)];

(ii) undertaking providing basic or cellular telecommunication services [80-IA(4)(ii)];

(iii) undertaking which develops, develops & operates or maintains & operates an industrial park or SEZ [80-IA(4)(iii)];

(iv) undertaking set up for generation / generation & distribution of power or laying of network / renovation or modernization of network of transmission / distribution lines [80-IA(4)(iv)] or

(v) set up for reconstruction or revival of power generation plant [80-IA(4)(v)].

The provisions of section 80-IA also contain the conditions to be satisfied for being eligible for deduction. As per section 80-IA(3), undertakings mentioned in (ii) and (iv) above should not be formed by splitting up or reconstruction of an existing business.

The proviso to clause (i) and clause (iii) of sub-section (4) of section 80-IA deal with the situation where operation and maintenance of infrastructure facility or operation and maintenance of industrial park / SEZ, respectively, is transferred to another enterprise in the manner provided therein and the transferee undertaking can avail deduction for the unexpired period.

Section 80-IA(12A) provides that where the enterprise or undertaking of an Indian Company entitled to the deduction under the said section is transferred on or after 01.04.2007 in a scheme of amalgamation or demerger, no deduction shall be available to the amalgamated or the resulting company.

The vital factor in determining the eligibility criteria for availing deduction u/s 80-IA would be verification of factual issues so as to ascertain whether

(a) there has been splitting up or reconstruction of a business already in existence,

(b) transfer is in accordance with the proviso to clause (i) or clause (iii) of sub-section (4) of section 80-IA, or

(c) transfer of an enterprise or undertaking is in a scheme of amalgamation or demerger.

The CBDT has, through this circular, clarified that if –

(i) an enterprise or undertaking develops an infrastructure facility, industrial park or special economic zone, as the case may be; and

(ii) transfers it to another enterprise or undertaking for operation and maintenance in accordance with the proviso to clause (i) or clause (iii) of sub-section (4) of section 80-IA; and

(iii) this transfer is not by way of amalgamation or demerger,

(iv) the transferee shall be eligible for the deduction for the unexpired period.

The profit for the purposes of deduction in the case of transferee shall be computed in accordance with sub-sections (5) to (10) of section 80-IA.

9

PROVISIONS CONCERNING ADVANCE TAX AND TAX DEDUCTED AT SOURCE

AMENDMENTS BY THE FINANCE ACT, 2015

(a) Person responsible for paying income chargeable under the head "Salaries" to obtain proof or evidence or particulars of prescribed deductions/ exemptions/set-off of losses claimed by the assessee [Section 192(2D)]

Effective from: 1st June, 2015

(i) As per section 192, the person responsible for paying (Drawing and Disbursing Officer) income chargeable under the head "Salaries" can allow certain deductions, exemptions or allowances or set-off of certain loss as per the provisions of the Act while estimating the income of the assessee or computing the amount of the tax deductible thereunder.

(ii) Since the proof for certain deductions, exemptions, set-off of losses claimed by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from self-occupied house property etc. is generally not available with the Drawing and Disbursing Officer, he has to depend upon the evidence/particulars furnished, if any, by the employees in support of their claim of deductions, exemptions, etc.

(iii) Since the Income-tax Act, 1961 does not contain specific provisions regarding nature of evidence/documents to be obtained by the Drawing and Disbursing Officer, their approach in this regard lacks uniformity.

(iv) For ensuring clarity and uniformity, sub-section (2D) has been inserted in section 192 to cast responsibility on the person responsible for paying any income chargeable under the head "Salaries" to obtain from the assessee, the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner, for the purposes of –

(1) estimating income of the assessee; or

(2) computing tax deductible under section 192(1).

(b) Tax to be deducted@10% on premature taxable withdrawal from employees provident fund [Section 192A]

Related amendment in section: 197A

Effective from: 1st June, 2015

(i) Under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952), certain specified employers are required to comply with the Employees Provident Fund Scheme, 1952 (EPFS). However, these employers are also permitted to establish and manage their own private provident fund (PF) scheme subject to fulfillment of certain conditions.

(ii) The provident funds established under a scheme framed under EPF & MP Act, 1952 or Provident Fund exempted under section 17 of the said Act and recognised under the Income-tax Act, 1961 are termed as Recognised Provident fund (RPF) under the Act.

(iii) Part A of the Fourth Schedule to the Income-tax Act, 1961 contains the provisions relating to RPFs. Under the existing provisions of Rule 8 of Part A of the Fourth Schedule, the withdrawal of accumulated balance by an employee from the RPF is exempt from taxation.

(iv) For the purpose of discouraging pre-mature withdrawal and promoting long term savings, if the employee makes withdrawal before continuous service of five years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.) and does not opt for transfer of accumulated balance to new employer, the withdrawal would be subject to tax.

(v) Rule 9 of Part A of the Fourth Schedule provides the manner of computing the tax liability of the employee in respect of such pre-mature withdrawal. In order to ensure collection of tax in respect of such pre-mature withdrawals, Rule 10 of Part A of the Fourth Schedule casts responsibility on the trustees of the RPF to deduct tax as computed in Rule 9 at the time of payment.

(vi) Rule 9 provides that the tax on withdrawn amount is required to be calculated by re-computing the tax liability of the years for which the contribution to RPF has been made by treating the same as contribution to unrecognized provident fund. The trustees of private provident fund schemes, are generally a part of the employer group and hence, have access to or can easily obtain the information regarding taxability of the employee making pre-mature withdrawal for the purposes of computation of the amount of tax liability under Rule 9. However, it may not always be possible for the trustees of EPFS to get the information regarding taxability of the employee such as year-wise amount of taxable income and tax payable for the purposes of computation of the amount of tax liability under Rule 9.

(vii) New section 192A has, therefore, been inserted to provide for deduction of tax@10% on premature taxable withdrawal from employees provident fund scheme. Accordingly, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A

of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10% at the time of payment of accumulated balance due to the employee.

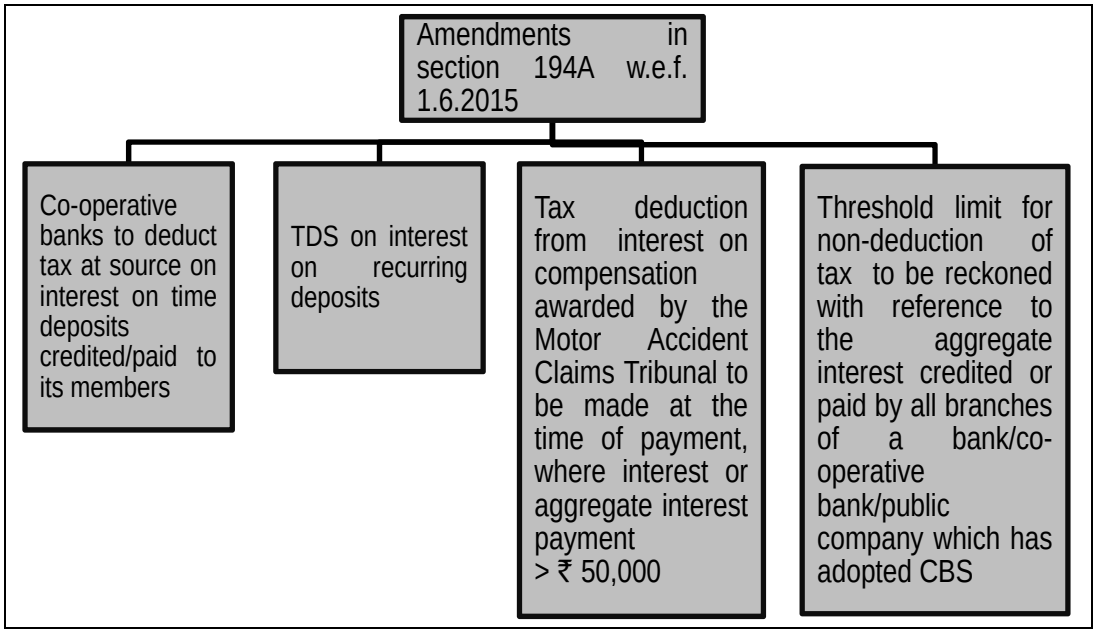
(viii) Tax deduction at source under this section has to be made only if the amount of such payment or aggregate amount of such payment of the payee is ₹ 30,000 or more.

(ix) Further, any person entitled to receive any amount on which tax is deductible under this section has to furnish his PAN to the person responsible for deducting such tax. In case he fails to do so, tax would be deductible at the maximum marginal rate.

(x) In order to reduce the compliance burden of these employees, the facility of filing self-declaration for non-deduction of tax under section 197A shall be extended to the employees receiving pre-mature withdrawal i.e., an employee can give a declaration in Form No. 15G to the effect that his total income including taxable pre-mature withdrawal from employees provident fund scheme does not exceed the maximum amount not chargeable to tax. When the employee furnishes such declaration, no tax will be deducted by the trustee of Employees Provident Fund Scheme while making the payment to such employee.

(xi) Likewise, facility of filing self-declaration in Form No. 15H for non-deduction of tax under section 197A has also been extended to the employees of the age of 60 years or more receiving pre-mature withdrawal.

(c) Rationalisation of the provisions of section 194A



(1) Co-operative banks to deduct tax at source on interest on time deposits credited or paid to its members [Section 194A]

Effective from: 1st June, 2015

(i) Section 194A(1) read with sections 194A(3)(i)(b) and 194A(3)(viia)(b) requires a co-operative bank to deduct tax from interest payment on time deposits, if the amount of such payment exceeds specified threshold of ₹ 10,000.

(ii) However, since section 194A(3)(v) exempts income credited or paid by a co-operative society to a member thereof, there is a view that co-operative banks are also entitled to exemption by making their depositors as members of different categories. However, courts have taken a view that a specific provision of tax deduction provided under section 194A(3)(i)(b) and 194A(3)(viia)(b) for co-operative banks override the general exemption provided to all co-operative societies for non-deduction of tax from interest payment to members under section 194A(3)(v).

(iii) In order to clarify the true intent of law, section 194A(3)(v) has been amended to specifically provide that with effect from 1st June, 2015, the exemption thereunder from deduction of tax at source from payment of interest to members by a co-operative society shall not apply to the payment of interest by the co-operative banks to its members.

(iv) However, the exemption available under section 194A(3)(viia)(a) to primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank from deduction of tax in respect of interest credited or paid on deposits shall continue to apply. Therefore, these co-operative credit societies/banks would not be required to deduct tax on interest credited or paid to depositors consequent to amendment of section 194A(3)(v).

(v) Further, the exemption under section 194A(3)(v) from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to co-operative banks and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.

(2) Interest on recurring deposits to be subject to tax deduction at source under section 194A

Effective from: 1st June, 2015

(i) Under section 194A(1) read with section 194A(3)(i), tax is required to be deducted on payment of interest (other than interest on securities) above a specified threshold, i.e., ₹ 10,000 for interest payment by banks, co-operative society engaged in banking business (co-operative bank) and post office and ₹ 5,000 for payment of interest by other persons.

(ii) Section 194A providing for deduction of tax from payment of interest by banking company or co-operative bank applies to the interest payment on time deposits made on or after 1st July, 1995.

(iii) The definition of "time deposits" under section 194A excludes "recurring deposit" from its scope. Therefore, payment of interest on recurring deposits by banking company or co-operative bank was not subject to TDS.

(iv) Since recurring deposit is also made for a fixed tenure and is, therefore, similar to time deposit, the definition of 'time deposits' in section 194A has been amended to include "recurring deposits" within its scope for the purposes of deduction of tax under section 194A.

(v) It may be noted that the existing threshold limit of ₹ 10,000 for non-deduction of tax shall also be applicable in case of interest payment on recurring deposits.

(3) Threshold limit to be reckoned with reference to the aggregate interest credited or paid by all branches of a banking company/co-operative bank/public company which has adopted core banking solutions [Section 194A(3)]

Effective from: 1st June, 2015

(i) As per the proviso to section 194A(3)(i), in the case of income credited or paid in respect of time deposits with a banking company or a co-operative bank or a public company with the main object of providing long-term finance for construction or purchase of houses in India for residential purposes, the threshold limit for deduction of tax at source (i.e., ₹ 10,000 or ₹ 5,000, as the case may be) shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company.

(ii) A second proviso has been inserted in section 194A(3)(i) to provide that the threshold limit will be reckoned with reference to the total interest credited or paid by the banking company or the co-operative society or the public company, as the case may be, (and not with reference to each branch), where such banking company or co-operative society or public company has adopted core banking solutions.

(4) Tax deduction from interest on compensation awarded by the Motor Accidents Claims Tribunal to be made at the time of payment, where the interest or aggregate interest paid exceeds ₹ 50,000 [Section 194A]

Effective from: 1st June, 2015

(i) Section 194A requires deduction of tax at source from the income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate amount of such income credited or paid during a financial year exceeds ₹ 50,000.

(ii) Section 145A provides that interest received on compensation or enhanced compensation shall be deemed to be the income of the year in which it is received. Section 56(2)(viii) brings to tax such interest received under the head "Income from other sources", after allowing a deduction of 50% of such income under section 57(iv).

(iii) Section 194A, however, requires deduction of tax from interest on compensation, at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier. The requirement of deduction of tax on such interest on accrual

basis at the time of credit of such income, in case the same is earlier than the payment, causes genuine hardship.

(iv) Consequently, section 194A has been amended to provide that deduction of tax thereunder from interest on the compensation amount awarded by the Motor Accidents Claims Tribunal shall be made *only at the time of payment*, and that too only if the amount of interest payment or the aggregate amount of such interest payments during the financial year exceeds ₹ 50,000.

(v) No tax is deductible at source on such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal.

Example

Examine the TDS implications under section 194A in the cases mentioned hereunder –

(i) On 1.10.2015, Mr. Harish made a six-month fixed deposit of ₹ 10 lakh@9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.2016.

(ii) On 1.6.2015, Mr. Ganesh made three nine month fixed deposits of ₹ 1 lakh each carrying interest@9% with Dwarka Branch, Janakpuri Branch and Rohini Branches of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 28.2.2016.

(iii) On 1.4.2015, Mr. Rajesh started a 1 year recurring deposit of ₹ 20,000 per month@8% p.a. with PQR Bank. The recurring deposit matures on 31.3.2016.

Answer

(i) ABC Co-operative Bank has to deduct tax at source@10% on the interest of ₹ 45,000 (9% × ₹ 10 lakh × ½) under section 194A. The tax deductible at source under section 194A from such interest is, therefore, ₹ 4,500.

(ii) XYZ Bank has to deduct tax at source@10% under section 194A, since the aggregate interest on fixed deposit with the three branches of the bank is ₹ 20,250 [1,00,000 × 3 × 9% × 9/12], which exceeds the threshold limit of ₹ 10,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 20,250 exceeds the threshold limit of ₹ 10,000, tax has to be deducted@10% under section 194A.

(iii) Tax has to be deducted under section 194A by PQR Bank on the interest of ₹ 10,400 falling due on recurring deposit on 31.3.2015 to Mr. Rajesh, since –

(1) "recurring deposit" has been included in the definition of "time deposit"; and

(2) such interest exceeds the threshold limit of ₹ 10,000.

(d) Exemption from applicability of TDS provisions under section 194C to be available only in respect of payments to transport operators owning ten or less goods carriages at any time during the previous year, on furnishing of PAN [Section 194C(6)]

Effective from: 1st June, 2015

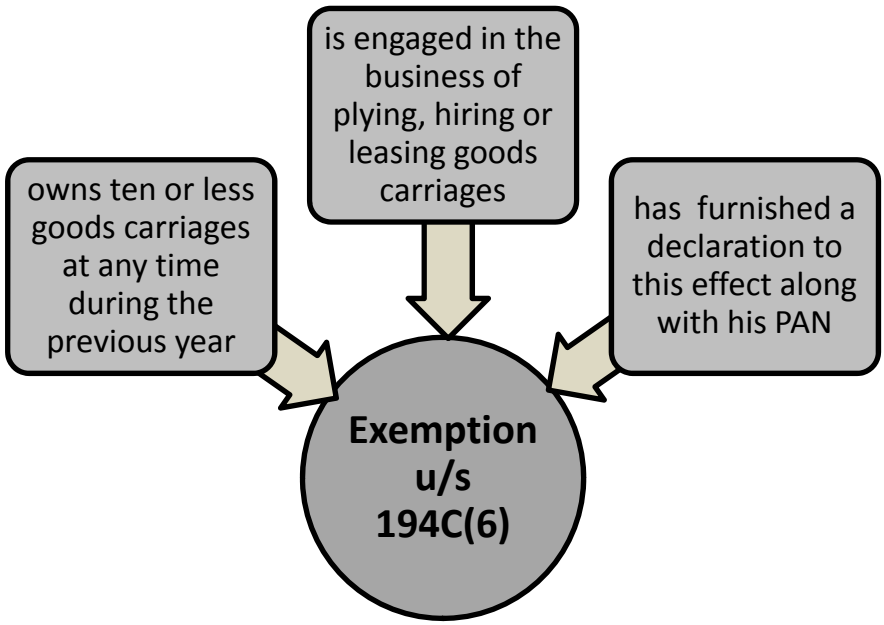
(i) Under section 194C, payment to contractors is subject to tax deduction at source (TDS) at the rate of 1%, in case the payee is an individual or Hindu undivided family, and at the

rate of 2% in case of other payees, if such payment exceeds ₹ 30,000 or aggregate of such payment in a financial year exceeds ₹ 75,000.

(ii) Prior to 1.10.2009, payment to an individual transporter who did not own more than two goods carriages at any time during the previous year, was exempt from TDS under section 194C. Thereafter, the Finance (No.2) Act, 2009 substituted section 194C, with effect from 1.10.2009, which *inter alia* provided for non-deduction of tax from payments made to the contractor during the course of plying, hiring and leasing goods carriage, if the contractor furnishes his Permanent Account Number (PAN) to the payer.

(iii) Even though as per the *Explanatory Memorandum* explaining the provisions of Finance (No.2) Bill, 2009, the intent of the amendment was to reduce the compliance burden on the small transport operators, as defined in section 44AE by exempting them from TDS under section 194C on furnishing of PAN, the language of section 194C(6) did not convey the correct intention. Consequently, all transporters, irrespective of the number of goods carriages owned by them, were claiming exemption from TDS under section 194C(6) by furnishing their PAN.

(iv) Accordingly, in order to convey the true intent of law, section 194C(6) has been amended to clarify that the relaxation provided thereunder from the requirement to deduct tax at source shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor, who fulfills the following three conditions cumulatively -



(e) Extension of eligible period of concessional tax rate@5% under section 194LD
Effective from: 1st June, 2015

(i) Under section 194LD, tax is required to be deducted at a concessional rate of 5% in case of interest payable at any time during the period between 1st June, 2013 and

31st May, 2015 to Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) on their investments in Government securities and rupee denominated bonds of an Indian company provided that the rate of interest does not exceed the rate notified by the Central Government in this regard.

(ii) The Finance (No.2) Act, 2014 has extended the limitation date for availing benefit of concessional rate of TDS@5% under section 194LC in respect of External Commercial Borrowings (ECB) from 30th June, 2015 to 30th June, 2017.

(iii) In line with such extension, the benefit of concessional rate of TDS@5% under section 194LD has also been extended in respect of such interest payable to FIIs and QFIs up to 30th June, 2017.

(f) Person responsible for paying any sum, whether or not chargeable to tax, to a non-corporate non-resident or to a foreign company, to furnish the information relating to payment of such sum in the prescribed form and prescribed manner [Section 195(6)]

Effective from: 1st June, 2015

(i) Section 195(6) requires the person referred to in section 195(1) to furnish prescribed information.

(ii) Section 195(1) casts responsibility on every person responsible for paying any interest (other than interest referred to in sections 194LB or 194LC or 194LD) or any sum chargeable to tax (not being in the nature of salary) to a non-corporate non-resident or to a foreign company, to deduct tax at the rates in force.

(iii) The mechanism of obtaining information in respect of remittances is intended to fulfill the objectives of -

(1) ensuring deduction of tax at the appropriate rate from taxable remittances; and

(2) identifying the remittances on which the tax was deductible but the payer has failed to deduct the tax.

(iv) Obtaining of information only in respect of remittances which the remitter has declared as taxable does not serve the objective of identifying the remittances on which tax was deductible but was not deducted.

(v) Accordingly, sub-section (6) of section 195 has been substituted to provide that the person responsible for paying any sum, *whether or not chargeable to tax*, to a non-corporate non-resident or to a foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and prescribed manner.

(g) Facilitating filing of Form 15G/15H for payments made under life insurance policy [Section 197A]

Effective from: 1st June, 2015

(i) The Finance (No.2) Act, 2014 had inserted section 194DA, with effect from 1.10.2014, to provide for deduction of tax at source@ 2% from payments made under life insurance

policy, which are not exempt under section 10(10D), and exceeds the threshold of ₹ 1 lakh thereunder.

(ii) In spite of providing a higher threshold of ₹ 1 lakh for deduction of tax under this section, there may be cases where the tax payable on recipient's total income, including the payment made under life insurance, will be Nil.

(iii) Section 197A, *inter alia,* provides that tax shall not be deducted, if the recipient of certain payments on which tax is deductible furnishes to the payer, a self-declaration in prescribed Form No.15G/15H, declaring that the tax on his estimated total income of the relevant previous year would be nil.

(iv) Section 197A has been amended for making the recipients of payments referred to in section 194DA also eligible for filing self-declaration in Form No.15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

(h) Notified deductors not required to obtain and quote TAN [Section 203A]

Effective from: 1st June, 2015

(i) Section 203A requires every person deducting tax or collecting tax to obtain Tax Deduction and Collection Account Number (TAN) and quote the same for reporting of tax deduction/collection to the Income-tax Department.

(ii) An exception is provided under section 194-IA, requiring tax deduction for payment above a specified threshold made for acquisition of immovable property (other than rural agricultural land) from a resident transferor. As per the provisions of this section, the deductor is not required to obtain and quote TAN and he is allowed to report the tax deducted by quoting his Permanent Account Number (PAN).

(iii) In other cases, the requirement to obtain TAN creates a compliance burden for those individuals and Hindu Undivided Family (HUFs) who are not liable for audit under section 44AB.

(iv) The quoting of TAN for reporting of tax deducted at source is a matter of procedure. The same purpose would be served by requiring mandatory quoting of PAN particularly for the transactions which are likely to be one time transaction, for instance, a one-time transaction of purchase of immovable property from non-resident by an individual or HUF on which tax is deductible under section 195.

(v) Therefore, in order to alleviate the compliance burden of such deductors, section 203A has been amended to provide that the requirement of obtaining and quoting of TAN under section 203A shall not apply to such person, as may be notified by the Central Government in this behalf.

(i) Enabling provision for computation of fee payable under section 234E at the time of processing TDS statements [Section 200A]

Effective from: 1st June, 2015

(i) Chapter XVII-B requires deduction of tax at source on certain specified payments at the specified rate, if the payment exceeds the specified threshold. Likewise, Chapter XVII-

BB requires collection of tax at source on certain specified receipts at the specified rates.

(ii) The person deducting tax is required to file a statement of tax deduction at source containing the details of deduction of tax made during the prescribed period by the prescribed due date. Similarly, the person collecting tax is also required to file a statement of tax collection at source containing the details of collection of tax made during the prescribed period by the prescribed due date.

(iii) Section 234E providing for levy of fee for late furnishing of TDS/TCS statement acts an effective deterrent against delay in furnishing of such statements and has served as an effective tool in ensuring timely submission of TDS/TCS statement by the deductor/ collector.

(iv) Section 200A providing for processing of TDS statements for determining the amount payable or refundable to the deductor was inserted by the Finance (No.2) Act, 2009. Thereafter, section 243E was inserted by the Finance Act, 2012. Section 234E, therefore, came into the statute book three years after section 200A. Hence, section 200A did not provide for determination of fee payable under section 234E at the time of processing of TDS statements.

(v) Section 200A has now been amended to enable computation of fee payable under section 234E at the time of processing of TDS statement under section 200A.

SIGNIFICANT NOTIFICATIONS/CIRCULARS

(1) Approval of long-term bonds and rate of interest for the purpose of section 194LC of the Income-tax Act, 1961 [Circular No. 15/2014, dated 17-10-2014]

Section 194LC, inserted by the Finance Act, 2012, provides for a concessional rate of withholding tax @ 5% on interest payment by an Indian company to a non-corporate non-resident or a foreign company. The concessional rate of tax and TDS was applicable if the borrowing is made in foreign currency between 1.7.2012 and 30.6.2015, from a source outside India, *inter alia,* by way of issue of long-term infrastructure bonds, as approved by the Central Government in this behalf.

This year, the Finance (No.2) Act, 2014 has expanded the scope of deduction of tax at a concessional rate of 5% under section 194LC to cover interest payable to a non-corporate non-resident or a foreign company by an Indian company or a business trust on money borrowed by it in foreign currency from a source outside India by issue of any long-term bond, including long-term infrastructure bond, as approved by the Central Government in this behalf, at any time between 1.10.2014 and 30.6.2017. It may be noted that the concessional rate of tax deducted at source would continue to be applicable in respect of long term infrastructure bonds issued during the period 1.7.2012 to 30.9.2014.

Considering the fact that a large number of bond issues have to be undertaken by Indian companies, the Government is providing an approval mechanism to avoid approval for

each and every specific case, which would lead to avoidable compliance burden on the borrower/issuer of bond. Accordingly, the CBDT conveys the approval of Central Government for issue of long-term bonds including long-term infrastructure bonds by Indian companies which satisfy the following conditions:

(a) The bond shall be issued at any time on or after 1st October, 2014 but before 1st July, 2017.

(b) The bond issue shall comply the relevant provisions of Foreign Exchange Management Act, 1999, read with relevant ECB regulations, either under automatic route or approval route.

(c) The bond issue should have Loan Registration Number issued by Reserve Bank of India.

(d) The term "long term" means that the bond to be issued should have original maturity term of three years or more.

Further, the Central Government has also approved the interest rate for the purpose of section 194LC in respect of borrowing by way of issue of long term bond including long term infrastructure bond, as any rate of interest which is within the All-in-cost ceilings specified by the RBI under ECB regulations as is applicable to the borrowing through a long term bond issue having regard to the tenure thereof.

Any bond issue satisfying the above conditions would be treated as approved by the Central Government for the purpose of section 194LC. Further, it has also been clarified that consequent to the amendment to section 194LC, the approval of Central Government contained in Circular No. 7/2012, in so far as they apply to borrowings by way of a loan agreement, shall be valid for the borrowings made on or before 30/06/2017 instead of 30/06/2015 as mentioned in the said Circular.

(2) Interest under section 234A not chargeable on self assessment tax paid before the due date of filing of return of income [Circular No. 2/2015, dated 10-2-2015]

Interest under section 234A is charged in case of default in furnishing return of income by an assessee. The interest is charged at the specified rate on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS, any relief of tax allowed under section 90 and 90A, any deduction allowed under section 91 and any tax credit allowed in accordance with section 115JAA and section 115JD. Since self-assessment tax is not mentioned as a component of tax to be reduced from the amount on which interest under section 234A is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even before the due date of filing of return.

However, it has been held by Hon'ble Supreme Court in the case of *CIT vs Prannoy Roy (2009), 309 ITR 231* that interest under section 234A on default of furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the Income-tax return for the relevant assessment year.

Accordingly, the CBDT reviewed the present practice of charging interest and decided that no interest under section 234A shall be charged on self assessment tax paid by the assessee on or before the due date of filing of return.

(3) Non-applicability of TDS provisions on payments made to Corporations whose income is exempt under section 10(26BBB) [Circular No. 7/2015, dated 23-04-2015]

The CBDT had earlier issued Circular No. 4/2002 dated 16.07.2002 which laid down that there would be no requirement for tax deduction at source in respect of payments made to such entities, whose income is unconditionally exempt under section 10 of the Income-tax Act, 1961 and who are statutorily not required to file return of income as per the section 139. The said Circular also lists the entities which are unconditionally exempt under section 10 and who are statutorily not required to file return of income as per section 139.

Subsequently, section 10(26BBB) was inserted in the Income-tax Act, 1961 vide Finance Act, 2003 w.e.f. 01.04.2004 to provide that any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-service-men being the citizens of India does not form part of the total income. The corporations covered under section 10(26BBB) are also statutorily not required to file return of income as per the section 139.

The corporations covered under section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 i.e., such corporations are statutorily not required to file return of income as per section 139 and their income is also unconditionally exempt under section 10 of the Income-tax Act, 1961. Accordingly, the CBDT has examined the matter and extended the benefit of the said Circular to such corporations whose income is exempt under section 10(26BBB). Hence, there would be no requirement for tax deduction at source from the payments made to such corporations, since their income is anyway exempt under the Income-tax Act, 1961.

10

PROVISIONS FOR FILING RETURN OF INCOME

AMENDMENT BY THE FINANCE ACT, 2015

(a) Beneficial Owner / Beneficiary of any asset located outside India required to file return of income in the prescribed form and manner [Section 139(1)]

Effective from: A.Y.2016-17

(i) The fourth proviso to section 139(1) requires a person, being a resident other than not ordinarily resident in India, having –

(1) any asset (including financial interest in any entity) located outside India or

(2) signing authority in any account located outside India

to file a return of income in the prescribed form compulsorily, whether or not he has income chargeable to tax. The return of income should be verified in the prescribed manner and provide such particulars as may be prescribed.

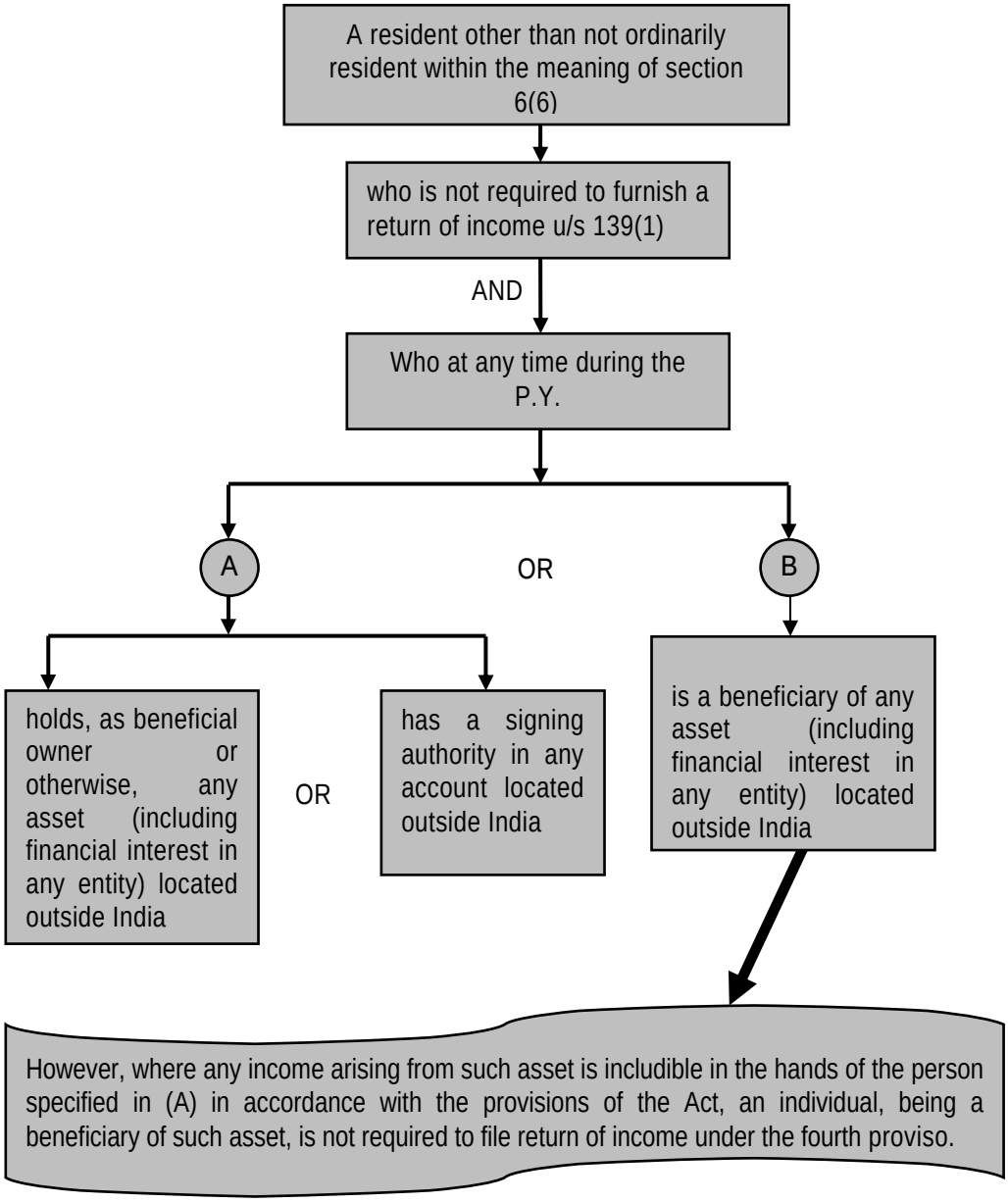
(ii) The fourth proviso to section 139(1) has been substituted with effect from A.Y.2016-17. It now requires filing of return of income or loss for the previous year in the prescribed form and verified in the prescribed manner on or before the due date, by every person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under section 139(1) if such person, at any time during the previous year, -

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has a signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India.

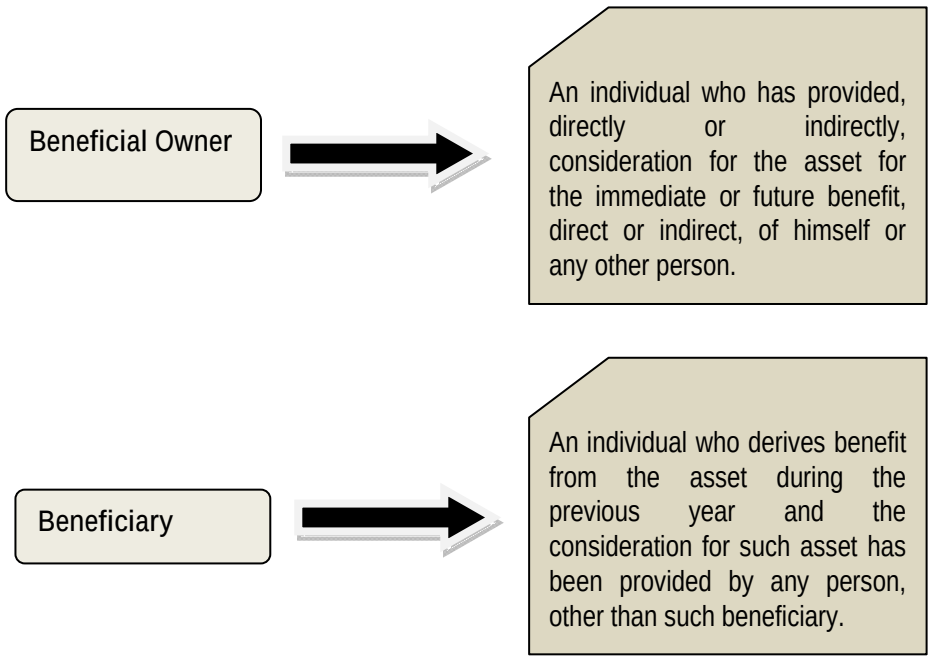
(iii) However, an individual being a beneficiary of any asset (including any financial interest in any entity) located outside India would not be required to file return of income under the fourth proviso to section 139(1), where, income, if any, arising from such asset is includible in the income of the person referred to in ii(a) above in accordance with the provisions of the Income-tax Act, 1961.

Requirement of filing of return of income as per the new fourth and fifth proviso to section 139(1)



(iv) Consequential amendment has been made in section 139(6) to provide that in the prescribed cases, the assessee shall be required to furnish the particulars of the assets of the prescribed nature and value, held by him as a beneficial owner or otherwise or in which he is a beneficiary, in the prescribed form of the returns referred to in sections 139(1)/139(3) and in section 142(1).

Meaning of "beneficial owner" and "beneficiary" in respect of an asset for the purpose of section 139:



PART – II
INDIRECT TAXES

INDIRECT TAXES

AMENDMENTS AT A GLANCE

Finance Act, 2015 and Significant Notifications issued during 01.05.2014 to 30.04.2015

S. No.	Particulars	Effective Date	Relevant section/Rule/ Notification
	Central Excise Duty		
1.	Standard ad valorem rate of excise duty increased from 12% to 12.50% and education cesses leviable on excisable goods fully exempted	01.03.2015	
2.	Central excise registration to be granted online within 2 working days	01.03.2015	
3.	Authentication of invoices by digital signatures	01.03.2015	
	Customs Duty		
4.	Notifications exempting education cesses on CVD rescinded consequent to education cesses on excise duty being exempted	01.03.2015	
5.	Education Cess and Secondary & Higher Education Cess leviable on imported goods to continue		
	Service Tax		
I.	Chapter V of Finance Act, 1994		
6.	(i) Service tax rate enhanced from 12% to 14% and (ii) Levy of education cesses on taxable services ceased to have effect	01.06.2015	Section 66B
7.	Activities undertaken by (i) chit fund foremen in relation to chit and (ii) lottery distributors and selling agents in relation to lotteries are not transactions in money or actionable claim and are thus, liable to service tax - Explanation 2 substituted in the definition of "service"	14.05.2015	Explanation 2 to section 65B(44)
8.	All services provided by the Government or local authority to a business entity removed from the Negative List	To be effective from a date to be notified	Section 66D(a)(iv)

9.	Definition of Government incorporated in the Act	14.05.2015	Section 65B(26A)
10.	Services by way of carrying out any process amounting to manufacture/production of potable liquor made liable to service tax	01.06.2015	Section 66D(f)
11.	Admission to entertainment events or access to amusement facilities made liable to service tax	01.06.2015	Section 66D(j)
12.	Consideration for a service includes (i) reimbursements and (ii) amount retained by distributor/selling agent of lottery from gross sale amount of lottery ticket or discount received thereon	14.05.2015	Clause (a) of Explanation to section 67
II.	Service Tax Rules, 1994		
13.	Concept of aggregator introduced in service tax - Definition of aggregator and brand name inserted in rule 2	01.03.2015	Rule 2(1)
14.	Aggregator to pay service tax under reverse charge	01.03.2015	Rule 2(1)(d)(i)(AAA)
15.	Service tax to be payable by recipient of service in case of service provided by (a) mutual fund agent/ distributor to mutual fund/ asset management company, (b) selling/marketing agent of lottery tickets to lottery distributor/selling agent	01.04.2015	Rule 2(1)(d)(i)(EEA) & Rule 2(1)(d)(i)(EEB)
16.	Service tax to be payable by the recipient of service in relation to ALL services provided by Government to business entities (except specified services)	To be effective from a date to be notified	Rule 2(1)(d)(i)(E)
17.	CBEC to specify conditions, safeguards and procedure for registration in service tax	01.03.2015	New sub-rule (9) inserted and sub-rule (1A) omitted in rule 4
18.	Provisions introduced for authentication of invoices by digital signatures	01.03.2015	New Rule 4C
19.	Sub-rule (6A) of rule 6 omitted consequent to amendment made in section 73	14.05.2015	Rule 6(6A) omitted
20.	Alternative rates for payment of service tax on air travel agent's service, life insurance services,	01.06.2015	Sub rules (7), (7A), (7B) and

	money changing service and service provided by lottery distributor/selling agent increased pursuant to the upward revision in service tax rate		(7C) of rule 6
III.	Others		
21.	Ambulance services provided by all service providers (whether or not by clinical establishment or an authorised medical practitioner or paramedics) exempted	01.04.2015	*Mega Exemption Notification No. 25/2012 ST dated 20.06.2012*
22.	General insurance provided under Pradhan Mantri Suraksha Bima Yojna exempted	30.04.2015	
23.	Life insurance provided under following schemes exempted:		
	Varishtha Pension Bima Yojna	01.04.2015	
	Pradhan Mantri Jeevan Jyoti Bima Yojna and Pradhan Mantri Jan Dhan Yojna	30.04.2015	
24.	Collection of contribution under Atal Pension Yojna (APY) exempted	30.04.2015	
25.	Treatment of effluent by Common Effluent Treatment Plant operator exempted	01.04.2015	
26.	Pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables exempted	01.04.2015	
27.	Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo exempted	01.04.2015	
28.	Exhibition of movie by exhibitor to distributor/ association of persons consisting of such exhibitor as one of its members exempted	01.04.2015	
29.	Services by way of right to admission to certain events/programmes exempted	01.06.2015	
30.	Service provided with respect to Kailash Mansarovar and Haj pilgrimage exempted	20.08.2014	
31.	Service tax payable on a performance in folk or classical art forms of music/ dance/ theatre if the consideration therefor exceeds ₹ 1,00,000	01.04.2015	
32.	Exemption to transportation of food stuff by rail or vessels or road limited to milk, salt and food grain including flours, pulses and rice	01.04.2015	
33.	Exemption to services by (i) mutual fund agent/distributor to a mutual fund or asset	01.04.2015	

	management company and (ii) selling/ marketing agent of lottery tickets to a distributor/selling agent, withdrawn		
34.	Exemption to carrying out an intermediate production process of alcoholic liquor for home consumption on job work basis withdrawn	01.06.2015	
35.	Exemption withdrawn for services by way of making telephone calls from departmentally run public telephone etc.	01.04.2015	
36.	Uniform abatement of 70% prescribed for (i) goods and passenger transport by rail and (ii) goods transport by road and vessel, subject to uniform condition of non-availment of CENVAT credit on inputs, capital goods and input services	01.04.2015	*Abatement Notification No. 26/2012 ST dated 20.06.2012*
37.	Abatement in case of passenger transportation by air in non-economy class reduced from 60% to 40%	01.04.2015	
38.	No abatement for services provided in relation to chit	01.04.2015	
39.	GTA service provided for transport of export goods by road from place of removal/ CFS/ICD to land customs station exempted	01.04.2015	*Notification No. 31/2012 ST dated 20.06.2012*
40.	Notification exempting service provided by a foreign commission agent to an Indian exporter rescinded	01.03.2015	*Notification No. 42/2012 ST dated 29.6.2012 rescinded*
41.	100% service tax to be paid under reverse charge in case of service provided by		*Reverse Charge Notification No. 30/2012 ST dated 20.06.2012*
	(a) mutual fund agent/ distributor to mutual fund/ asset management company,	01.04.2015	
	(b) selling/marketing agent of lottery tickets to lottery distributor/selling agent and	01.04.2015	
	(c) person involving an aggregator	01.03.2015	
42.	Service tax to be paid under reverse charge in case of ALL taxable services provided by Government (except specified services)	To be effective from a date to be notified	

43.	Scope of reverse charge widened	01.03.2015	
44.	Entire service tax to be paid under reverse charge in case of manpower supply and security services	01.04.2015	
IV.	CENVAT Credit Rules, 2004		
45.	Manufacturers allowed to utilize credit of education cess (EC) and secondary and higher education cess (SHEC) for payment of excise duty	30.04.2015	Third, fourth and fifth provisos inserted in rule 3(7)(b)
46.	CENVAT credit allowed on inputs and capital goods received directly in the premises of the job worker	01.03.2015	Rules 4(1) and 4(2)(a)
47.	Time limit for availing credit on inputs and input services increased from 6 months to 1 year of the date of invoice	01.03.2015	Rules 4(1) and 4(7)
48.	Time limit for return of capital goods from a job worker to manufacturer/output service provider increased from 6 months to 2 years	01.03.2015	Rule 4(5)
49.	Provisions relating to availment of CENVAT credit under partial and full reverse charge brought at par	01.04.2015	Rule 4(7)
50.	Explanations (I) and (II) to sub-rule (7) of rule 4 to apply to entire rule 4	01.03.2015	Explanations (I) and (II) to sub-rule (7) of rule 4
51.	Export goods defined for the purpose of refund of CENVAT credit under rule 5	01.03.2015	Clause (1A) of Explanation 1 to rule 5
52.	Inputs and input services used in the manufacture of non-excisable goods to attract reversal provisions under rule 6	01.03.2015	Explanations (1) and (2) to rule 6(1)
53.	Provisions applicable to first/second stage dealer regarding maintenance of records to be able to pass on the credit, to apply to an importer issuing CENVATable invoice	01.03.2015	Rule 9(4)
V.	2% Swachh Bharat Cess to be levied on value of all or any of taxable services	To be effective from a date to be notified	Section 119 of Finance Act, 2015

1

BASIC CONCEPTS OF INDIRECT TAXES

AMENDMENTS BY FINANCE ACT, 2015 AND SIGNIFICANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2014 TO 30.04.2015

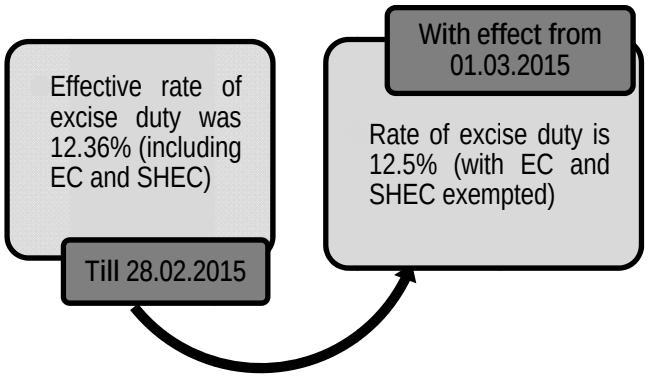
UNIT – 2: Central Excise Duty

1. Standard ad valorem rate of excise duty increased from 12% to 12.50% and education cesses leviable on excisable goods fully exempted

The standard ad valorem rate of excise duty (i.e. CENVAT) has been increased from 12% to 12.50%. Further, Education Cess levied on all excisable goods as a duty of excise has been fully exempted vide *Notification No. 14/2015 CE dated 01.03.2015*. Similarly, Secondary & Higher Education Cess leviable on excisable goods as a duty of excise has also been fully exempted vide *Notification No. 15/2015 CE dated 01.03.2015*.

Thus, in effect, the effective general rate of excise duty has been increased from 12.36% (inclusive of cesses) to 12.50% (with cesses exempted).

[Effective from 01.03.2015]



2. Central excise registration to be granted online within 2 working days *

With effect from 01.03.2015, only an online application can be made for obtaining central excise registration and the same will be granted within two working days of the receipt of a duly completed application form. Verification of documents and premises, as the case may be, can be carried out after the grant of the registration *[Notification No. 7/2015 CE (NT) dated 01.03.2015].*

[Effective from 01.03.2015]

3. Authentication of invoices by digital signatures*

An invoice issued under central excise law by a manufacturer may now be authenticated by means of a digital signature. However, where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the duplicate copy of the invoice meant for transporter and self attested by the manufacturer would be used for transport of goods *[Notification No. 8/2015 CE (NT) dated 01.03.2015]*.

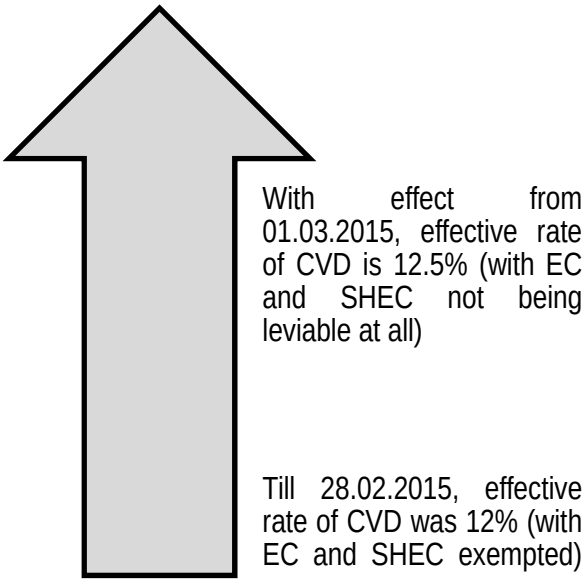
[Effective from 01.03.2015]

* *It may be noted that the procedures under central excise have been discussed in detail at the Final level. At the level of Intermediate (IPC), only a bird's eye view of the significant procedures under central excise has been given to familiarize the students with the basic aspects of such procedures.*

1. Notifications exempting education cesses on CVD rescinded consequent to education cesses on excise duty being exempted

Notifications Nos. 13/2012 Cus and 14/2012 Cus both dated 17.03.2012 exempt Education Cess and Secondary & Higher Education Cess leviable as CVD on imported goods. Since Education Cess and Secondary & Higher Education Cess leviable on excisable goods have been exempted in general, there will be no corresponding levy as CVD on imported goods. Hence, these notifications have been rescinded vide *Notification No. 9/2015 Cus dated 01.03.2015.*

It may be noted that rescinding of the said exemption notifications for education cesses does not imply that the same would become payable on CVD, as these cesses have now been exempted on excisable goods in general. Thus, the ultimate position remains same – education cesses were not payable on CVD earlier and will also not be payable on or after March 1, 2015.



[Effective from 01.03.2015]

2. Education Cess and Secondary & Higher Education Cess leviable on imported goods to continue

There is no change in Education Cess leviable on imported goods as a duty of customs and Secondary & Higher Education Cess leviable on imported goods as a duty of customs. These cesses will continue to be levied on imported goods.

2

BASIC CONCEPTS OF SERVICE TAX

AMENDMENTS BY FINANCE ACT, 2015

1. (i) Service tax rate enhanced from 12% to 14% and (ii) Levy of education cesses on taxable services ceased to have effect [Section 66B]

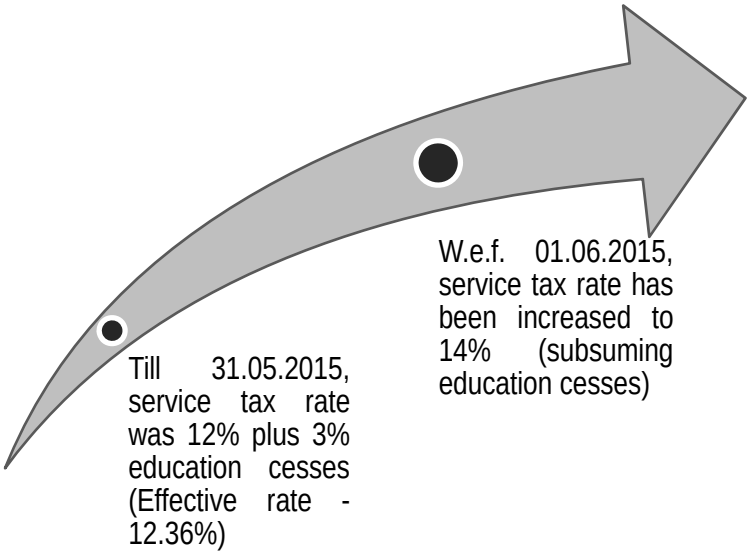
The rate of service tax has been increased from 12% to 14%. Further, the 'Education Cess' @ 2% and 'Secondary and Higher Education Cess' @ 1% have been subsumed in the revised rate of service tax. Thus, the effective increase in service tax rate is from the existing 12.36% (inclusive of cesses) to 14%, subsuming the cesses.

The change in rate of service tax has been effected as under:

(i) Section 66B, the charging section, has been amended to increase the rate of service tax from 12% to 14%.

(ii) It has been provided vide sections 153 and 159 respectively of the Finance Act, 2015 that Education Cess and Secondary and Higher Education Cess leviable on taxable services shall cease to have effect.

Both the above amendments were to be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015. The Central Government, after the Bill got enacted on 14.05.2015, vide *Notification No. 14/2015 dated 19.05.2015* has notified June 1, 2015 as the date for these amendments to become effective. Thus, the new service tax rate has come into effect from 01.06.2015.



[Effective from 01.06.2015]

2. 2% Swachh Bharat Cess to be levied on value of all or any of taxable services [Section 119 of the Finance Act, 2015]

Section 119 of the Finance Act, 2015 has empowered the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services. This cess shall be levied from such date as may be notified by the Central Government. The details of coverage of this Cess would be notified in due course. However, no notification has been issued in this regard, as yet.

[To be effective from a date to be notified]

3. Activities undertaken by (i) chit fund foremen in relation to chit and (ii) lottery distributors and selling agents in relation to lotteries are not transactions in money or actionable claim and are thus, liable to service tax - Explanation 2 substituted in the definition of "service" [Explanation 2 to section 65B(44)]

(a) Clause (44) of section 65B *inter alia* defines service to mean any activity carried out by a person for another for consideration, and includes a declared service. The definition *inter alia* excludes an activity which constitutes merely a transaction in money or actionable claim.

(b) The Finance Act, 2015 has substituted Explanation 2 to the definition of "service". The substituted Explanation reads as under:

"Explanation 2. – For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include––

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out––

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.

(c) The TRU Letter explaining the budget proposals says that the intention in law has been to levy service tax on the services provided by:

(i) chit fund foremen by way of conducting a chit.

(ii) distributor or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way for organizing and conducting a lottery.

(d) Thus, it has been made clear that what is excluded from the definition of service is only a transaction in money or actionable claim (like lottery) and not any activity in relation to, or for facilitation of a transaction in money or actionable claim.

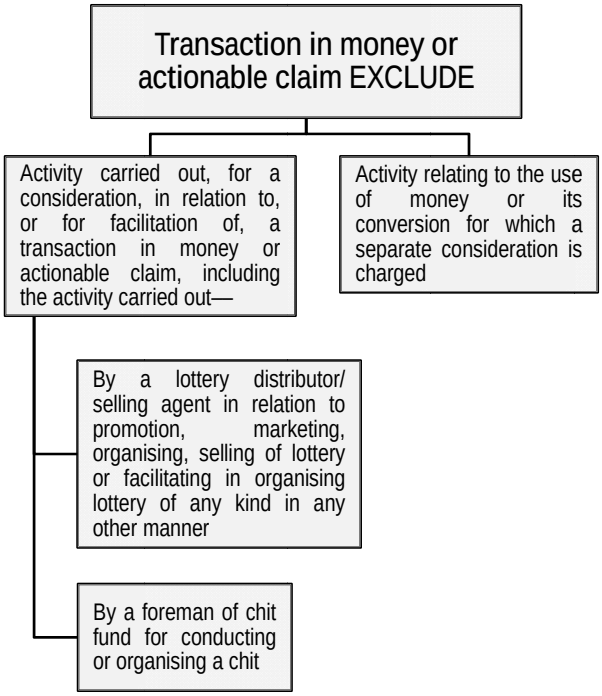
(e) With effect from 01.06.2015, an Explanation has been inserted in clause (i) of section 66D which covers betting, gambling or lottery under negative list of services. The Explanation clarifies that the expression 'betting, gambling or lottery' shall not include the activity specified in Explanation 2 to section 65B(44). Thus, by virtue of the said amendment, the activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner shall be out of the ambit of 'transaction in money or actionable claim' as well as the negative list of services.

(f) A new clause (23A) has been inserted in section 65B to define the term “foreman of chit fund” as under:

“Foreman of chit fund shall have the same meaning as is assigned to the term foreman in clause (j) of section 2 of the Chit Funds Act, 1982.”

(g) Also, another new clause (31A) has been inserted in section 65B to define the term “lottery distributor or selling agent” as under:

“Lottery distributor or selling agent means a person appointed or authorised by a State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any kind, in any manner, organised by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998.”



[Effective from 14.05.2015]

4. All services provided by the Government or local authority to a business entity removed from the Negative List [Section 66D(a)(iv)]

Services provided by Government or a local authority, excluding certain services, are covered in the Negative List of services vide clause (a) of section 66D. The excluded services are specified under sub-clauses (i) to (iv) of clause (a). Sub-clause (iv) covers support services provided by the Government or local authority to business entities thereby making the same liable to service tax.

The said sub-clause (iv) has been amended by substituting the words "support services" with the words "any service". This would enable exclusion of all services provided by the Government or local authority to a business entity from the Negative List. Consequently, the definition of "support service" as provided under section 65B(49) has also been omitted.

Therefore, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List would be liable to service tax.

It may be noted that this amendment is yet to become effective as the date on which the same will come into effect has not been notified as of now.

[To be effective from a date to be notified]

5. Definition of Government incorporated in the Act [Section 65B(26A)]

Services, excluding a few specified services, provided by the Government are included in the Negative List. Further, specified services received by the Government are also exempt. However, the term "government" had not been defined in the Act or under any notification. This gave rise to interpretational issues. To address such issues, w.e.f. 14.05.2015, a definition of the term "Government" has been incorporated in the Act vide clause (26A) under section 65B. The new definition reads as under:

"Government means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder".

[Effective from 14.05.2015]

6. Services by way of carrying out any process amounting to manufacture/production of potable liquor made liable to service tax [Section 66D(f)]

Services by way of carrying out any process amounting to manufacture or production of goods were covered in the Negative List under clause (f) of section 66D.

Clause (f) has been substituted by a new clause to exclude process for production or manufacture of alcoholic liquor for human consumption from the ambit of negative list. Consequently, service tax would be levied on contract manufacturing/job work for production of potable liquor for a consideration. The substituted clause (f) reads as under:

"services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption".

Pursuant to the said amendment, following consequential amendments have also been made in other provisions of service tax law:

(i) The words "alcoholic liquors for human consumption" have been omitted from the definition of the term "process amounting to manufacture or production of goods" as provided in clause (40) of section 65B. The amended definition reads as under:

"process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or any process amounting to manufacture of opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force".

(ii) Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* has been amended to withdraw exemption pertaining to intermediate production of alcoholic liquor for

human consumption. *The amendments in the Mega Exemption Notification have been discussed in detail in Chapter 5: Exemptions and Abatements.*

[Effective from 01.06.2015]

7. Admission to entertainment events or access to amusement facilities made liable to service tax [Section 66D(j)]

Clause (j) of the negative list under section 66D pertaining to "admission to entertainment events or access to amusement facilities" has been omitted vide the Finance Act, 2015. Consequently, the definitions of "amusement facility" and "entertainment event" as contained in section 65B(9) and section 65B(24) have also been omitted.

Therefore, service tax would be leviable on admission to entertainment event or access to amusement facility. Thus, entry to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks would be exigible to service tax.

However, simultaneous exemption has also been provided in respect of admission to certain specific events/programmes etc. by inserting a new entry in the Mega Exemption Notification. *The amendments in the Mega Exemption Notification have been discussed in detail in Chapter 5: Exemptions and Abatements.*

[Effective from 01.06.2015]

SIGNIFICANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2014 TO 30.04.2015

Clarification regarding levy of service tax on joint venture

CBEC has issued following clarification regarding levy of service tax on joint venture:

(i) Services provided by the members of the Joint Venture (JV) to the JV and *vice versa* or between the members of the JV: In accordance with Explanation 3(a) of the definition of service under section 65B(44) of the Finance Act, 1994, JV (an unincorporated temporary association constituted for the limited purpose of carrying out a specified project) and the members of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or *vice versa* and between the members of the JV are taxable.

(ii) Cash calls (capital contributions) made by the members to the JV: If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B(44) of the Finance Act, 1994. Whether a 'cash call' is 'merely…. a transaction in money' [in terms of section 65B(44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the comprehensive examination of the Joint Venture Agreement, which may vary from case to case. Detailed and close scrutiny of the terms of JV agreement may be required in each case, to determine the service tax treatment of cash calls.

[Circular No. 179/5/2014 ST dated 24.09.2014]

4

VALUATION OF TAXABLE SERVICE

AMENDMENTS BY FINANCE ACT, 2015

Consideration for a service includes (i) reimbursements and (ii) amount retained by distributor/selling agent of lottery from gross sale amount of lottery ticket or discount received thereon [Clause (a) of Explanation to section 67]

(i) Section 67 prescribes the provisions for determining the value of taxable services. Clause (a) of Explanation to section 67 clarified that "consideration" includes any amount that is payable for the taxable services provided or to be provided.

(ii) The Finance Act, 2015 has substituted clause (a) of Explanation to section 67 which defines consideration.

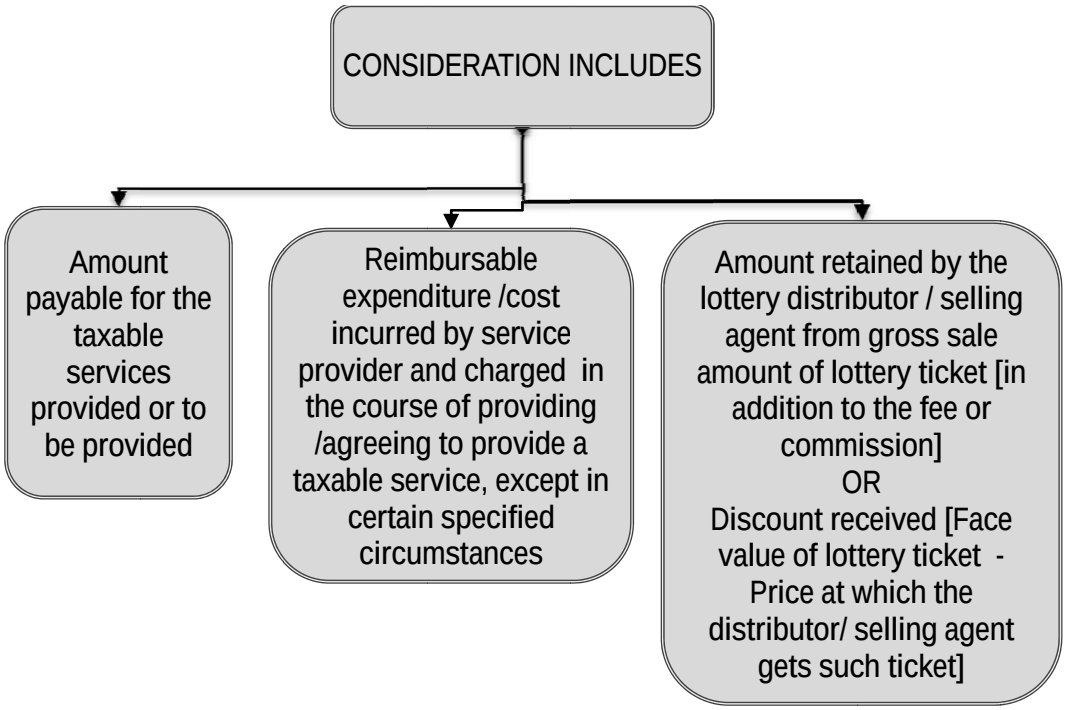
(iii) The substituted clause (a) of Explanation to section 67 reads as under:

"(a) consideration includes–

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket."



[Effective from 14.05.2015]

5

EXEMPTIONS AND ABATEMENTS

SIGNIFICANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2014 TO 30.04.2015

1. Mega Exemption Notification amended

Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* has been amended vide *Notification No. 6/2015 ST dated 01.03.2015, unless specified otherwise.* The amendments are discussed in the following two broad categories:

(A) New exemptions

(B) Exemptions withdrawn/restricted

(A) NEW EXEMPTIONS

(i) Ambulance services provided by all service providers (whether or not by clinical establishment or an authorised medical practitioner or paramedics) exempted

Earlier, entry 2 exempted any service provided by way of transportation of a patient to and from a clinical establishment from service tax only when the said service was provided by a clinical establishment or an authorised medical practitioner or paramedics.

The scope of this exemption has now been widened to extend the said exemption to ambulance services provided by all service providers. Therefore, now the ambulance services provided by an entity which is not a clinical establishment or an authorised medical practitioner or paramedics would also be exempt from service tax. The above amendment has been made by substituting entry 2 with a new entry.

[Effective from 01.04.2015]

(ii) General insurance provided under Pradhan Mantri Suraksha Bima Yojna exempted

Entry 26 exempts services of general insurance business provided under specified schemes. A new clause (p) has been inserted vide *Notification No. 12/2015 ST dated 30.04.2015* in the said entry to exempt services of general insurance business provided under Pradhan Mantri Suraksha Bima Yojna.

[Effective from 30.04.2015]

(iii) Life insurance provided under Varishtha Pension Bima Yojna, Pradhan Mantri Jeevan Jyoti Bima Yojna and Pradhan Mantri Jan Dhan Yojna exempted

Entry 26A exempts services of life insurance business provided under specified schemes. Clauses (d), (e) and (f) have been inserted in the said entry to exempt services of life insurance business provided in respect of the following additional schemes:

Clause (d) Varishtha Pension Bima Yojna - *[Effective from 01.04.2015]*

Clause (e) Pradhan Mantri Jeevan Jyoti Bima Yojna – *[Effective from 30.04.2015 vide Notification No. 12/2015 ST dated 30.04.2015]*

Clause (f) Pradhan Mantri Jan Dhan Yojna - *[Effective from 30.04.2015 vide Notification No. 12/2015 ST dated 30.04.2015]*

(iv) Collection of contribution under Atal Pension Yojna (APY) exempted

A new entry 26B has been inserted in the notification vide *Notification No. 12/2015 ST dated 30.04.2015* to exempt the services by way of collection of contribution under Atal Pension Yojna.

[Effective from 30.04.2015]

(v) Treatment of effluent by Common Effluent Treatment Plant operator exempted

A new entry 43 has been inserted in the notification to exempt the services by operator of Common Effluent Treatment Plant by way of treatment of effluent.

[Effective from 01.04.2015]

(vi) Pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables exempted

A new entry 44 has been inserted in the notification to exempt the services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

[Effective from 01.04.2015]

(vii) Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo exempted

Services provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve have been exempted. A new entry 45 has been inserted in the notification to give effect to this exemption.

Following definitions have been also been inserted in the notification pursuant to the said exemption:

1. *National park has the meaning assigned to it in the clause (21) of the section 2 of The Wild Life (Protection) Act, 1972 [Clause (xaa)].*
2. *Wildlife sanctuary means sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 [Clause (zk)].*
3. *Zoo has the meaning assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 [Clause (zl)].*

   Section 2(39) of the Wild Life (Protection) Act, 1972 provides that "Zoo" means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public but does not include a circus and an establishment of a licenced dealer in captive animals.
4. *Tiger reserve has the meaning assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 [Clause (zi)].*

[Effective from 01.04.2015]

(viii) Exhibition of movie by exhibitor to distributor/ association of persons consisting of such exhibitor as one of its members exempted

Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members has been exempted. A new entry 46 has been inserted in the notification to give effect to this exemption.

[Effective from 01.04.2015]

(ix) Services by way of right to admission to certain events/programmes exempted

With effect from 01.06.2015, clause (j) of the negative list under section 66D pertaining to "admission to entertainment events or access to amusement facilities" has been omitted vide the Finance Act, 2015. Therefore, service tax would be leviable on admission to entertainment event or access to amusement facility. However, simultaneous exemption has also been provided in respect of admission to certain specific events/programmes etc. [described below] by inserting a new entry 47 in the mega exemption notification.

Thus, in effect service tax would continue to be exempted on these activities even after the amendment made in the negative list. The difference would be, thus, that prior to 01.06.2015, these activities were covered under the negative list of services and from 01.06.2015, they would be exempted vide Mega Exemption Notification.

New entry 47 provides exemption in respect of the services by way of right to admission to-

(i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;

(ii) recognized sporting event;

(iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than ₹ 500 per person.

Therefore, service tax would be levied on service by way of admission to entertainment event of concerts, pageants, musical performance, award functions and sporting events other than the recognized sporting event, if the amount charged is more than ₹ 500 for right to admission to such an event.

Clause (zab) has been inserted in the notification to define a recognised sporting event to mean *any sporting event-*

(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;

(ii) covered under entry 11.

Entry 11 of the notification covers services by way of sponsorship of sporting events organised-

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state, zone or country;

(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(c) by Central Civil Services Cultural and Sports Board;

(d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

[Effective from 01.06.2015]

(x) Service provided with respect to Kailash Mansarovar and Haj pilgrimage exempted

Services provided by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement, have been exempted from service tax vide *Notification No. 17/2014 ST dated 20.08.2014.*

Specified organisation means:

(a) Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or

(b) Haj Committee of India and State Haj Committees constituted under the Haj Committee Act, 2002, for making arrangements for the pilgrimage of Muslims of India for Haj.

Thus, the religious pilgrimage organized by the Haj Committee and Kumaon Mandal Vikas Nigam Ltd. are not liable to service tax.

[Effective from 20.08.2014]

(B) EXEMPTIONS WITHDRAWN/RESTRICTED

(i) Service tax payable on a performance in folk or classical art forms of music/ dance/ theatre if the consideration therefor exceeds ₹ 1,00,000

Earlier, services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador was exempt from service tax under entry 16 of the notification.

The scope of the said exemption has now been restricted by fixing a monetary limit of ₹ 1,00,000 in respect of a performance. Thus, now exemption to services provided by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, will be limited only to such cases where amount charged is upto ₹ 1,00,000 for a performance. However, services provided by an artist as brand ambassador will continue to remain taxable.

[Effective from 01.04.2015]

(ii) Exemption to transportation of food stuff by rail or vessels or road limited to milk, salt and food grain including flours, pulses and rice

Earlier, transportation of foodstuff - including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages - by rail/ vessel and by goods carriage was exempt from service tax under entry 20(i) and entry 21(d) of the notification respectively.

Entry 20(i) and entry 21(d) have been amended to restrict such exemption to transportation of only milk, salt and food grain including flours, pulses and rice by rail/ vessel and by goods carriage. Transportation of agricultural produce by rail or a vessel and by goods carriage is separately exempt vide entry 20(h) and entry 21(a) respectively, and this exemption would continue.

[Effective from 01.04.2015]

(iii) Exemption to services by (i) mutual fund agent/distributor to a mutual fund or asset management company and (ii) selling/ marketing agent of lottery tickets to a distributor/selling agent, withdrawn

Earlier, services by the following persons in their respective capacities were exempt from service tax under entry 29 of the notification:-

(i) mutual fund agent to a mutual fund or asset management company

(ii) distributor to a mutual fund or asset management company

(iii) selling or marketing agent of lottery tickets to a distributor or a selling agent.

The said exemption has now been withdrawn by omitting clause (c), (d) and (e) of entry 29 from the notification. Thus, service tax will be payable on these services.

[Effective from 01.04.2015]

(iv) Exemption to carrying out an intermediate production process of alcoholic liquor for home consumption on job work basis withdrawn

Earlier, carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer was exempt from service tax vide clause (c) of entry 30 of the notification.

However, consequent to imposition of service tax on services by way of manufacture of alcoholic liquor for human consumption, an amendment has been made in entry 30(c) of the notification to exclude carrying out of intermediate production process of alcoholic liquor for human consumption on job work, from this entry.

[Effective from 01.06.2015]

(v) Exemption withdrawn for services by way of making telephone calls from departmentally run public telephone etc.

Exemption has been withdrawn in respect of services by way of making telephone calls from-

(a) departmentally run public telephone;

(b) guaranteed public telephone operating only for local calls; or

(c) free telephone at airport and hospital where no bills has been issued.

Entry 32 of the notification has been omitted to give effect to this amendment.

[Effective from 01.04.2015]

2. Abatement Notification amended

Abatement *Notification No. 26/2012 ST dated 20.06.2012* has been amended vide *Notification No. 8/2015 ST dated 01.03.2015* as under:

(i) Uniform abatement of 70% prescribed for (i) goods and passenger transport by rail and (ii) goods transport by road and vessel, subject to uniform condition of non-availment of CENVAT credit on inputs, capital goods and input services

Earlier, service tax was payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road by a goods transport agency (GTA) and 40% for goods transport by vessels. The conditions prescribed also varied.

A uniform abatement of 70% has now been prescribed for (i) transport of goods and passengers by rail and (ii) transport of goods by road by a GTA and vessel alongwith a uniform condition of non-availment of CENVAT credit on inputs, capital goods and input

services, used for providing the taxable service. In case of goods transport by road by a GTA, the condition for non-availment of CENVAT is for service provider.

Thus, in effect, the abatement percentage has increased from 60 to 70 in case of goods transport by vessel and reduced from 75 to 70 in case of goods transport by road by a goods transport agency. The percentage of abatement however, has remained unaffected in case of rail transport of goods and passengers (70%). Further, while the condition of non-availment of CENVAT credit was present in the case of road and vessel transport of goods earlier also, the same has been introduced newly in case of rail transport of goods and passengers.

[Effective from 01.04.2015]

(ii) Abatement in case of passenger transportation by air in non-economy class reduced from 60% to 40%

Earlier, service tax was payable on 40% of the value of air transport of passengers for economy as well as higher classes, like business class.

Such abatement has now been bifurcated into two categories:-

(a) Abatement for transport of passengers by air, with or without accompanied belongings in economy class - 60%

(b) Abatement for transport of passengers by air, with or without accompanied belongings in other than economy class - 40%

Thus, in effect, abatement for classes other than economy has been reduced by 20% and therefore, service tax would be payable on 60% of the value of air travel in such higher classes.

[Effective from 01.04.2015]

(iii) No abatement for services provided in relation to chit

Earlier, in respect of services provided in relation to chit, service tax was payable on 30% of the value of taxable service under entry 8 of the notification.

However, the abatement of 70% has now been withdrawn from services provided in relation to chit by omitting entry 8. Consequently, service tax would be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. They would be entitled to take CENVAT credit.

[Effective from 01.04.2015]

3. GTA service provided for transport of export goods by road from place of removal/ CFS/ICD to land customs station exempted

Earlier, *Notification No. 31/2012 ST dated 20.06.2012* exempted the goods transport agency service provided for transport of export goods by road from

- the place of removal to an inland container depot (ICD), a container freight station (CFS), a port or airport;
- any CFS or ICD to the port or airport.

Scope of this exemption has been widened vide *Notification No. 4/2015 ST dated 01.03.2015* to exempt such services when provided for transport of export goods by road from the place of removal or from any CFS/ICD to a land customs station (LCS) also.

[Effective from 01.04.2015]

4. Notification exempting service provided by a foreign commission agent to an Indian exporter rescinded *[Notification No. 42/2012 ST dated 29.6.2012 rescinded]*

Services provided by a commission agent located outside India to an exporter of goods located in India were exempted vide *Notification No. 42/2012 ST dated 29.6.2012.* However, with effect from 01.10.2014, such services became non-taxable as the place of provision of such service shifted to non-taxable territory. Consequently, there remained no need of any exemption for the said service.

Therefore, since this exemption became redundant[1], *Notification No. 42/*2012 *ST dated 29.6.2012* has been rescinded vide *Notification No. 3/2015 ST dated 01.03.2015*.

[Effective from 01.03.2015]

[1] *The exemption to the service provided by a foreign commission agent to an Indian exporter of goods became redundant on account of the amendment made in the Place of Provision of Services Rules, 2012. By virtue of the said amendment, the place of provision of such services shifted from taxable territory (location of service receiver – Indian exporter) to non-taxable territory (location of service provider – foreign commission agent). It may be noted that the Place of Provision of Services Rules, 2012 is outside the scope of syllabus of Part II: Indirect Taxes of Paper 4: Taxation.*

6

SERVICE TAX PROCEDURES

SIGNIFICANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2014 TO 30.04.2015

1. Following amendments have been made in Service Tax Rules, 1994 vide *Notification No. 5/2015 ST dated 01.03.2015, unless specified otherwise:*

(i) Concept of aggregator introduced in service tax

The word 'aggregate' literally means a whole formed by combining several elements, formed by the combination of many separate items or units. The aggregator is one, who therefore aggregates or causes aggregation of units, items, things or services.

There are also many online websites that follow 'aggregator' model. Under this model, an entity collects or aggregates information on a particular service from several sources on a single platform and draws customers to its platform to connect them with the service provider. It may also facilitate the customers in comparing the prices and specifications of a particular service offered by multiple service providers.

Therefore, companies which act as aggregator for service providers like travel portals, food portals or cab services will now be liable to pay service tax.

(a) Definition of aggregator and brand name inserted in rule 2 [Rule 2(1)]

Amendments have been made in Service Tax Rules to bring such aggregator within the service tax net. The definition of "aggregator" has been provided by inserting clause (aa) in rule 2(1) as under-

"Aggregator means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator" [Rule 2(1)(aa)]

Accordingly, "brand name or trade name" has also been defined by inserting clause (bca) in rule 2(1) as under:

"Brand name or trade means a brand name or a trade name whether registered or not, that is to say, a name or a mark, such as an –

- *invented word or writing,*
- *or a symbol,*

- *monogram,*
- *logo,*
- *label,*
- *signature,*

which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person" [Rule 2(1)(bca)].

[Effective from 01.03.2015]

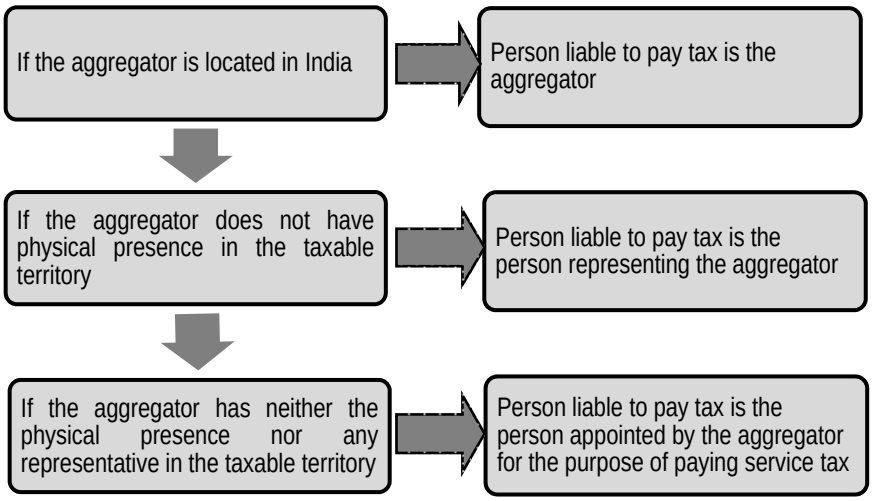
(b) Aggregator to pay service tax under reverse charge [Rule 2(1)(d)(i)(AAA)]

Rule 2(1)(d)(i) defines the term "person liable for paying service tax" in respect of the taxable services notified under section 68(2) of Finance Act, 1994. A new clause (AAA) has been inserted in the said rule to provide that in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service would be the person liable for paying service tax.

In case, the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory will be liable for paying service tax.

However, if the aggregator neither has a physical presence nor does it have a representative for any purpose in the taxable territory, it will have to appoint a person in the taxable territory for the purpose of paying service tax and such person will be the person liable for paying service tax.

The above has been represented in the diagram given below:



[Effective from 01.03.2015]

(ii) Service tax to be payable by recipient of service in case of service provided by (a) mutual fund agent/ distributor to mutual fund/ asset management company, (b) selling/marketing agent of lottery tickets to lottery distributor/selling agent [Rule 2(1)(d)(i)(EEA) & Rule 2(1)(d)(i)(EEB)]

A new clause (EEA) has been inserted in the rule 2(1)(d)(i) to provide that in relation to service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company, the recipient of the service would be the person liable for paying service tax.

A new clause (EEB) has been inserted in the rule 2(1)(d)(i) to provide that in relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the recipient of the service would be the person liable for paying service tax.

[Effective from 01.04.2015]

(iii) Service tax to be payable by the recipient of service in relation to ALL services provided by Government to business entities (except specified services) [Rule 2(1)(d)(i)(E)]

In relation to certain support services provided or agreed to be provided by Government or local authority to any business entity located in the taxable territory, the recipient of service is liable to pay service tax.

However, consequent to the amendment in the negative list, all services provided by Government/local authority to a business entity would be removed from the negative list and not just support services. *It may be noted that this amendment is yet to become effective as the date on which the same will come into effect has not been notified as of now.*

Therefore, in case of all taxable services (and not just support services) provided or agreed to be provided by Government/ local authority (excluding certain specified services) to any business entity located in the taxable territory, service tax would be payable by recipient of such service.

Since the amendment in the negative list will become effective from a date to be notified, the amendment in the rules will also become effective only from a date which is yet to be notified.

The word "support" would be omitted from rule 2(1)(d)(i)(E) to give effect to this amendment.

[To be effective from a date to be notified]

(iv) CBEC to specify conditions, safeguards and procedure for registration in service tax [New sub-rule (9) inserted and sub-rule (1A) omitted in rule 4]

CBEC had specified certain documents which were to be submitted by the assessee within a period of 15 days from the date of filing of the application for registration vide the powers given under rule 4(1A).

Sub-rule (1A) has been omitted and a new sub rule (9) inserted to provide that CBEC will, by way of an order, specify the conditions, safeguards and procedure for registration in service tax.

In this regard, *Order No. 1/15 ST dated 28.02.2015, effective from 01.03.2015* has been issued, prescribing documentation, time limits and procedure for registration. It has also been prescribed that henceforth registration for single premises will be granted within two days of filing the application. The Order provides the documentation, time limits and procedure for registration as under:

General procedure

1. Applicants seeking registration for single premises shall file an online application for registration on ACES website in Form ST-1.
2. Following details are to be mandatorily furnished in the application form:
   (a) Permanent Account Number (PAN) of the proprietor or the legal entity being registered (except Government Departments)
   (b) E-mail and mobile number
3. Registration would be granted online within 2 days of filing the complete application form. On grant of registration, the applicant would be enabled to electronically pay service tax.
4. Registration Certificate downloaded from the ACES website would be accepted as proof of registration and there would be no need for a signed copy.

Documentation required

A self attested copy of the following documents will have to be submitted by registered post/ speed post to the concerned Division, within 7 days of filing the Form ST-1 online, for the purposes of verification:

1. Copy of the PAN Card of the proprietor or the legal entity registered
2. Photograph and proof of identity of the person filling the application
3. Document to establish possession of the premises to be registered such as proof of ownership, lease or rent agreement, allotment letter from Government, No Objection Certificate from the legal owner
4. Details of the main Bank Account
5. Memorandum/Articles of Association/List of Directors

6. Authorisation by the Board of Directors/Partners/Proprietor for the person filing the application

7. Business transaction numbers obtained from other Government departments or agencies such as Customs Registration No. (BIN No), Import Export Code (IEC) number, State Sales Tax Number (VAT), Central Sales Tax Number, Company Index Number (CIN) which have been issued prior to the filing of the service tax registration application

Verification of premises, if there arises any need for the same, will have to be authorised by an officer not below the rank of Additional/Joint Commissioner.

Revocation of registration certificate

The registration certificate may be revoked by the Deputy/Assistant Commissioner in any of the following situations, after giving the assessee an opportunity to represent against the proposed revocation and taking into consideration the reply received, if any:

1. the premises are found to be non existent or not in possession of the assessee.

2. no documents are received within 15 days of the date of filing the registration application.

3. the documents are found to be incomplete or incorrect in any respect.

[Effective from 01.03.2015]

(v) Provisions introduced for authentication of invoices by digital signatures [New rule 4C]

A provision has been added for authentication of invoices by means of digital signatures by inserting new rule 4C. New rule 4C provides that any invoice, bill or challan issued under rule 4A or consignment note issued under rule 4B may be authenticated by means of a digital signature. The Board may specify the conditions, safeguards and procedure to be followed by any person issuing digitally signed invoices, by way of a notification.

[Effective from 01.03.2015]

(vi) Sub-rule (6A) of rule 6 omitted consequent to amendment made in section 73 [Rule 6(6A) omitted]

Sub-rule (6A) of rule 6 which provided for recovery of service tax, self-assessed and declared in the return (but not paid), under section 87 has been omitted consequent to the amendment in section 73 for enabling such recovery[2].

[Effective from 14.05.2015]

[2] *It may be noted that section 73 and section 87 are outside the scope of syllabus of Part II: Indirect Taxes of Paper 4: Taxation*

(vii) Alternative rates for payment of service tax on air travel agent's service, life insurance services, money changing service and service provided by lottery distributor/selling agent increased pursuant to the upward revision in service tax rate [Sub rules (7), (7A), (7B) and (7C) of rule 6]

In respect of services given in the table below, the service provider has been allowed to pay service tax at an alternative rate subject to the conditions prescribed under rule sub-rules (7), (7A), (7B) and (7C) of rule 6 of the Service Tax Rules, 1994. Consequent to the upward revision in service tax rate from 12% to 14%, the said alternative rates have also been revised proportionately as under:

Rule	Service		Old Rate	New Rate
Rule 6(7)	Air travel agent's service (Domestic Bookings)		0.6% of the basic fare	0.7% of the basic fare
	Air travel agent's service (International Bookings)		1.2% of the basic fare	1.4% of the basic fare
Rule 6(7A)	Life insurance service (First year)		3% of the premium charged	3.5% of the premium charged
	Life insurance service (Subsequent year)		1.5% of the premium charged	1.75% of the premium charged
Rule 6(7B)	Money changing service	Upto ₹ 100,000	0.12 % of the gross amount of currency exchanged or ₹ 30 whichever is higher	0.14 % of the gross amount of currency exchanged or ₹ 35 whichever is higher
		Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 120 + 0.06 % of the (gross amount of currency exchanged -₹ 1,00,000)	₹ 140 + 0.07 % of the (gross amount of currency exchanged -₹ 1,00,000)
		Exceeding ₹ 10,00,000	₹ 660 + 0.012 % of the (gross amount of currency exchanged -₹ 10,00,000) or ₹ 6,000 whichever is lower	₹ 770 + 0.014 % of the (gross amount of currency exchanged -₹ 10,00,000) or ₹ 7,000 whichever is lower
Rule 6(7C)	Lottery distributor and selling	Where the guaranteed lottery prize	₹ 7000/- on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate	₹ 8,200/-on every ₹ 10 lakh (or part of ₹ 10 lakh) of

	agent's service	payout is > 80%	face value of lottery tickets printed by the organising State for a draw	aggregate face value of lottery tickets printed by the organising State for a draw.
		Where the guaranteed lottery prize payout is < 80%	₹ 11,000/- on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	₹ 12,800/- on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
	The meaning of distributor or selling agent given vide sub-clause (i) of the Explanation to rule 6(7C) has been omitted as the same has been provided in the Finance Act, 1994 itself under section 65B(31A) – *[Effective from 14.05.2015].*			

[Effective from 01.06.2015]

2. Amendments in Reverse Charge Notification

Taxable services in respect of which service tax is payable under section 68(2) of Finance Act, 1994, i.e., under reverse charge are notified under *Notification No. 30/2012 ST dated 20.06.2012.* The said notification has been amended vide *Notification No. 7/2015 ST dated 01.03.2015* as under:

(i) 100% service tax to be paid under reverse charge in case of service provided by (a) mutual fund agent/ distributor to mutual fund/ asset management company, (b) selling/marketing agent of lottery tickets to lottery distributor/selling agent and (c) person involving an aggregator

Following services have been added in the list of services on which service tax is payable under full reverse charge (100% service tax to be paid by the person liable for paying service tax other than the service provider):

(a) Taxable services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company - *Effective from 01.04.2015*

(b) Taxable services provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent - *Effective from 01.04.2015*

(c) Taxable services provided or agreed to be provided by a person involving an aggregator in any manner - *Effective from 01.03.2015*

(ii) Service tax to be paid under reverse charge in case of ALL taxable services provided by Government (except specified services)

Service tax is payable under full reverse charge in case of taxable services provided or agreed to be provided by Government/ local authority by way of support services (excluding certain specified services) to any business entity.

However, consequent to the amendment in the negative list, all services provided by Government/local authority to a business entity would be removed from the negative list and not just support services. *It may be noted that this amendment is yet to become effective as the date on which the same will come into effect has not been notified as of now.*

Therefore, in case of **all** taxable services (and not just support services) provided or agreed to be provided by Government/ local authority (excluding certain specified services) to any business entity located in the taxable territory, service tax would be payable under full reverse charge.

Since the amendment in the negative list will become effective from a date to be notified, the amendment in the notification will also become effective only from a date which is yet to be notified.

The words "by way of support services" would be omitted from sub-clause (iv)(C) of clause A in paragraph I of the notification to give effect to this amendment.

[To be effective from a date to be notified]

(iii) Scope of reverse charge widened

The scope of reverse charge provisions has been widened with the introduction of concept of aggregator under service tax. Earlier, service tax was payable either by the service provider (normal charge) or the service receiver (reverse charge – full or partial). However, now under reverse charge provisions, service tax may be payable by any other person (who is liable for paying service tax) who may or may not be the service receiver e.g., an aggregator). Thus, an amendment has been made in paragraph II of the notification to give effect to this amendment.

Further, in the Table in column (4), the column heading "percentage of service tax payable by the person receiving the service" has been substituted with "percentage of service tax payable by any person liable for paying service tax other than the service provider" as person liable to pay service tax may not necessarily be service receiver.

[Effective from 01.03.2015]

(iv) Entire service tax to be paid under reverse charge in case of manpower supply and security services

Earlier, in respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services by any individual, HUF or partnership firm including association of persons to a business entity registered as body corporate, 25%

of service tax was payable by the person providing the service and remaining 75% by the service receiver.

However, now the entire service tax i.e., 100% service tax would be payable by the person liable for paying service tax other than the service provider (service recipient in this case).

[Effective from 01.04.2015]

7

CENVAT CREDIT

SIGNIFICANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2014 TO 30.04.2015

1. Following amendments have been made in CENVAT Credit Rules, 2004 [CCR] vide *Notification No. 6/2015 CE (NT) dated 01.03.2015, unless specified otherwise*:

   (i) Manufacturers allowed to utilize credit of education cess (EC) and secondary and higher education cess (SHEC) for payment of excise duty [Third, fourth and fifth provisos inserted in rule 3(7)(b)]

   Earlier, credit of EC on excisable goods or taxable services could not be utilised for payment of any other duty except EC payable on excisable goods or taxable services. Similarly, credit of SHEC on excisable goods or taxable services could not be utilised for payment of any other duty except SHEC payable on excisable goods or taxable services.

   However, pursuant to the exemption granted to EC and SHEC leviable on all excisable goods (with effect from 01.03.2015), a manufacturer has been allowed to utilise the following credits of EC and SHEC for the payment of basic excise duty:

   (i) credit of EC and SHEC paid on inputs or capital goods received in the factory of manufacture of final product on/after the 1st day of March, 2015.

   (ii) credit of balance 50% EC and SHEC paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15.

   (iii) credit of EC and SHEC paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015.

   Notification No. 12/2015 CE (NT) dated 30.04.2015 has inserted third, fourth and fifth provisos in rule 3(7)(b) to give effect to this amendment.

   [Effective from 30.04.2015]

   (ii) CENVAT credit allowed on inputs and capital goods received directly in the premises of the job worker [Rules 4(1) and 4(2)(a)]

   Earlier, rule 4(1) allowed instant CENVAT credit on receipt of inputs into the factory of the manufacturer or in the premises of the output service provider or on the delivery of inputs to the output service provider. Likewise, rule 4(2)(a) allowed CENVAT credit on capital goods on receipt of the same in the factory or in the premises of the output

service provider or outside the factory for generation of electricity for captive use within the factory or on the delivery of capital goods to the output service provider. Further, when goods were directly sent to job-worker's premises without bringing them in the manufacturer/output service provider's premises, CENVAT credit could be taken only when such goods were received back from the job-worker's premises in the premises of manufacturer/output service provider.

Rule 4(1) and rule 4(2)(a) have been amended to allow CENVAT credit in respect of inputs and capital goods immediately on receipt of the same in the premises of job worker where the same are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be.

[Effective from 01.03.2015]

(iii) Time limit for availing credit on inputs and input services increased from 6 months to 1 year of the date of invoice [Rules 4(1) and 4(7)]

The time limit for availment of CENVAT credit on inputs and input services has been extended from six months to one year of the date of the issue of invoice/bill/challan etc. Amendments have been made in third proviso to rule 4(1) and the erstwhile sixth proviso (now fifth proviso) to rule 4(7) to enhance the time limit for availability of credit in respect of inputs and input services respectively.

The provisos lay down that the manufacturer and the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in rule 9(1).

[Effective from 01.03.2015]

(iv) Time limit for return of capital goods from a job worker to manufacturer/output service provider increased from 6 months to 2 years [Rule 4(5)]

Earlier, rule 4(5)(a) *inter alia* provided for a common time limit of 180 days for return of inputs and capital goods sent to a job-worker for the purpose of availing CENVAT credit.

Rule 4(5)(a) has now been amended to provide as follows:-

(a) CENVAT credit on inputs will be allowed even if any inputs as such or after being partially processed are sent to a job worker and from there subsequently sent to another job worker and likewise, for

- further processing,
- testing,
- repairing,
- re-conditioning or
- for the manufacture of intermediate goods necessary for the manufacture of final products or

- any other purpose.

Such credit will be allowed only if it is established from the records /challans/ memos/ or any other document produced by the manufacturer/ output service provider taking CENVAT credit that the inputs or the products produced therefrom are received back by the manufacturer/ output service provider within 180 days of their being sent from the factory/premises of output service provider, as the case may be.

(b) CENVAT credit on capital goods will be allowed even if any capital goods as such are sent to a job worker for

- further processing,
- testing,
- repair,
- re-conditioning or
- for the manufacture of intermediate goods necessary for the manufacture of final products or
- any other purpose.

Such credit will be allowed only if it is established from the records, challans or memos or any other document produced by the manufacturer /output service provider taking the CENVAT credit that the capital goods are received back by the manufacturer /output service provider, as the case may be, within 2 years of their being so sent.

(c) Further, the credit will be allowed even if any inputs or capital goods are directly sent to a job worker without their being first brought to the premises of the manufacturer/ output service provider and in such a case, the period of 180 days or 2 years, as the case may be, will be counted from the date of receipt of such goods by the job worker.

(d) If the inputs or capital goods are not received back within 180 days and 2 years respectively, the manufacturer/ output service provider will have to pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise. However, such credit may be retaken once the inputs or capital goods are received back in the factory/ premises of the output service provider.

[Effective from 01.03.2015]

(v) Provisions relating to availment of CENVAT credit under partial and full reverse charge brought at par [Rule 4(7)]

Prior to 01.04.2015, there were separate provisions for availment of credit on input services in case of payment of service tax under full reverse charge and partial reverse

charge. Whereas under full reverse charge, payment of service tax ensured availability of credit on input services; under partial reverse charge, payment to service provider (along with payment of service tax) was also a pre-requisite for availing credit.

The provisions for availing credit of service tax paid under partial reverse charge have now been aligned with the provisions applicable for full reverse charge. Thus, now CENVAT credit of service tax paid under partial reverse charge by the service receiver will also be allowed on payment of service tax alone without linking it to the payment to the service provider. The second proviso has been omitted and first proviso to rule 4(7) amended to give effect to this amendment.

Earlier, the third proviso to rule 4(7) laid down that CENVAT credit availed on input service ought to be reversed (except in case where service tax has been paid under full reverse charge) if value of input service and service tax is not paid within three months of the date of the invoice/bill/challan. The amount equivalent to the credit reversed could be taken back whenever the payment of value of input service and service tax is made.

The provisions contained in the erstwhile third proviso have now been set out in new second proviso to sub-rule (7). Cases where service tax is paid under reverse charge (both partial or full) have been excluded in the newly inserted second proviso.

[Effective from 01.04.2015]

(vi) Explanations (I) and (II) to sub-rule (7) of rule 4 to apply to entire rule 4

Earlier, the below mentioned explanations were only applicable to sub-rule (7) of rule 4:

"I. The amount mentioned in this sub-rule shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

II. If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken."

However, now the above-mentioned explanations have been made applicable to entire rule 4 by substituting the words 'sub-rule' appearing therein with the word 'rule'.

Thus, in effect, earlier the two explanations were applicable in respect of amount payable on non-payment of value of input service and service tax within three months of date of invoice as provided under sub-rule (7). However, now they will also apply in relation to amount payable on non-receipt of inputs and capital goods within 180 days and 2 years respectively under sub-rule (5)(a)(iii).

[Effective from 01.03.2015]

(vii) Export goods defined for the purpose of refund of CENVAT credit under rule 5 [Clause (1A) of Explanation 1 to rule 5]

Rule 5 provides for refund of CENVAT credit when a manufacturer clears export goods without payment of duty or a service provider exports an output service without payment of service tax. Refund is computed as per the formula prescribed in the rule and is subject to certain procedure, safeguards, conditions and limitations specified by the Board.

Though the term 'export service' has been defined in the rule, the term 'export goods' was not defined in the rule. The definition of 'export goods' has now been inserted in the rule to mean any goods which are to be taken out of India to a place outside India. Clause (1A) has been inserted in Explanation 1 to rule 5 to give effect to this amendment.

[Effective from 01.03.2015]

(viii) Inputs and input services used in the manufacture of non-excisable goods to attract reversal provisions under rule 6 [Explanations (1) and (2) to rule 6(1)]

(a) Rule 6 lays down the provisions for reversal of CENVAT credit when a manufacturer manufactures both dutiable and exempted final products or a service provider provides both taxable and exempted services.

(b) The rule sets out the various options to quantify the credit that needs to be reversed on inputs and input services which are used in manufacture of exempted goods or in provision of exempted services.

(c) Under rule 2(d) of CCR, exempted goods are defined as excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under *Notification No. 1/2011 C.E. dated 01.03.2011* or under entries at serial numbers 67 and 128 of *Notification No. 12/2012 C.E. dated 17.03.2012* is availed.

(d) However, it has now been clarified vide Explanation 1 inserted after sub-rule (1) that for the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 will include non-excisable goods cleared for a consideration from the factory.

(e) It has been further clarified vide Explanation 2 that value of non –excisable goods for the purpose of this rule, will be the invoice value. Where such invoice value would not be available, the value will be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

(f) It is to be noted that the above explanations are applicable only to rule 6.

(g) The implication of the said amendment is that inputs and input services used in the manufacture of non-excisable goods will also attract the reversal provisions under rule 6. To illustrate, if a manufacturer manufactures dutiable and non-excisable goods, credit on input or input services used in the manufacture of non-excisable goods will have to be reversed in accordance with the provisions of rule 6.

(h) It is worthwhile to note here that since exempted service *inter alia* means services on which no service tax is leviable under section 66B of Finance Act, 1994, credit of inputs or input services used in provision of non-taxable services is required to be reversed under rule 6.

(i) Thus, now after the amendment in rule 6, there remains no difference with regard to reversal of credit by a manufacturer *vis-a-vis* a service provider. In other words, provisions for reversal of credit on exempted goods and exempted services have now been aligned.

[Effective from 01.03.2015]

(ix) Provisions applicable to first/second stage dealer regarding maintenance of records to be able to pass on the credit, to apply to an importer issuing CENVATable invoice [Rule 9(4)]

Rule 9(4) provides that CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer will be allowed only if such first stage dealer or second stage dealer has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on *pro rata* basis has been indicated in the invoice issued by him.

A proviso has been inserted in the sub-rule (4) which lays down that provisions of this sub-rule will apply *mutatis mutandis* to an importer who issues an invoice on which CENVAT credit can be taken.

[Effective from 01.03.2015]

2. Clarification regarding availment of CENVAT credit after six months (now one year)

It has been clarified by CBEC that the limitation period of 6 months for availing CENVAT credit would not apply when re-credit is taken of amount reversed under:

(i) third proviso (now second proviso) to rule 4(7) of the CENVAT Credit Rules, 2004 (CCR)

(ii) rule 3(5B) of CCR

(iii) rule 4(5)(a) of CCR,

after meeting the conditions prescribed in these rules. The limitation period of 6 months applies only when the credit is taken for the first time on an eligible document.

[Circular No. 990/14/2014 CX dated 19.11.2014]

Note: *This Circular was issued during the period when the limitation period for availment of CENVAT credit was 6 months. However, the principle on the basis of which the clarification is issued will apply under new limitation period of 1 year also. Thus, the Circular may apply for amended provisions also.*

Third proviso to rule 4(7) (now second proviso), rule 3(5B) and rule 4(5)(a) of CCR stipulate as follows:

(i) Third proviso to rule 4(7) of CCR (now second proviso) prescribes that if the payment of value of input service and service tax payable is not made within three months of date of invoice, bill or challan, then the CENVAT credit availed is required to be paid back by the manufacturer or service provider. Subsequently, when such payment of value of input service and service tax is made, the amount so paid back can be re-credited.

(ii) Rule 3(5B) of CCR stipulates that if the value of any input or capital goods before being put to use on which CENVAT credit has been taken, is written off or such provisions made in Books of Account, the manufacturer or service provider is required to pay an amount equal to credit so taken. However, when the inputs or capital goods are subsequently used, the amount so paid can be re-credited in the account.

(iii) Rule 4(5)(a) of CCR prescribes that in case inputs/capital goods sent to job worker are not received back within 180 days/ 2 years, the manufacturer or service provider is required to pay an amount equal to credit taken on such inputs/ capital goods in the first instance. However, when the inputs/ capital goods are subsequently received back from job worker, credit can be retaken of the amount so paid.

3. Clarification regarding determination of place of removal in the case of exports for purposes of CENVAT credit of input services

While determining the eligibility of the input services to CENVAT credit, determination of place of removal is required. The following has been clarified in this regard:

(i) Place of removal in case of direct export of goods by the manufacturer exporter to his foreign buyer will be the port/ICD/CFS where the shipping bill is filed by the manufacturer exporter.

(ii) Place of removal in case of clearance of goods from the factory for export by a merchant exporter will be the factory gate. However, in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ ICD/CFS where shipping bill is filed by the merchant exporter.

[Circular No. 999/6/2015 CX dated 28.02.2015]